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§ 1. Short title

This chapter may be cited as the “Commodity Exchange Act.”

(Sept. 21, 1922, ch. 369, §1, 42 Stat. 998; June 15, 1936, ch. 545, §1, 49 Stat. 1491.)

PRIOR PROVISIONS

This chapter superseded act Aug. 24, 1921, ch. 86, 42 Stat. 187, known as “The Future Trading Act,” which act was declared unconstitutional, at least in part, in *Hill v. Wallace*, Ill. 1922, 42 S.Ct. 453, 259 U.S. 44, 66 L.Ed. 822. Section 3 of that act was found unconstitutional as imposing a penalty in *Trusler v. Crooks*, Mo. 1926, 46 S.Ct. 165, 269 U.S. 475, 70 L.Ed. 365.

AMENDMENTS

1936—Act June 15, 1936, substituted “Commodity Exchange Act” for “The Grain Futures Act”.

EFFECTIVE DATE OF 1936 AMENDMENT

Section 13 of act June 15, 1936, provided that: “All provisions of this Act [see Tables for classification] authorizing the registration of futures commission merchants and floor brokers, the fixing of fees and charges therefor, the promulgation of rules, regulations and orders, and the holding of hearings precedent to the promulgation of rules, regulations, and orders shall be effective immediately. All other provisions of this Act shall take effect ninety days after the enactment of this Act [June 15, 1936].”

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-554, §1(a)(5) [§1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-365, provided that: “This Act [H.R. 5660, as enacted by section 1(a)(5) of Pub. L. 106-554, enacting sections 5, 6a-1, 7 to 7a-3, 7b-1, 7b-2, 9c, and 27 to 27f of this title, sections 781 to 784 of Title 11, Bankruptcy, sections 339a, 4421, and 4422 of Title 12, Banks and Banking, and sections 77b-1 and 78c-1 of Title 15, Commerce and Trade, amending sections 1a, 2, 2a, 4, 4a, 6 to 6m, 6p, 7a-2, 7b, 8 to 9a, 10a, 11, 12, 12a to 12c, 13, 13a to 13b, 16, 18 to 21, and 25 of this title, sections 101, 103, 109, and 761 of Title 11, sections 624 and 4402 of Title 12, and sections 77b, 77c, 77l, 77q, 78c, 78f, 78g, 78i, 78j, 78k-1, 78l, 78o, 78o-3, 78p, 78q, 78q-1, 78s, 78t, 78u, 78u-1, 78bb, 78ee, 78ccc, 78lll, 80a-2, 80b-2, and 80b-3 of Title 15, repealing sections 5, 7, 7a, and 12e of this title, and enacting provisions set out as notes under this section, section 2 of this title, and section 78c of Title 15] may be cited as the ‘Commodity Futures Modernization Act of 2000’.”

Pub. L. 106-554, §1(a)(5) [title IV, §401], Dec. 21, 2000, 114 Stat. 2763, 2763A-457, provided that: “This title [title IV of H.R. 5660, as enacted by section 1(a)(5) of Pub. L. 106-554, enacting sections 27 to 27f of this title] may be cited as the ‘Legal Certainty for Bank Products Act of 2000’.”

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104-9, §1, Apr. 21, 1995, 109 Stat. 154, provided that: “This Act [amending section 16 of this title] may be cited as the ‘CFTC Reauthorization Act of 1995’.”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-546, §1(a), Oct. 28, 1992, 106 Stat. 3590, provided that: “This Act [enacting sections 1a and 12e of

this title, amending sections 2, 2a, 4, 4a, 6 to 6c, 6e to 6g, 6j, 6p, 7 to 9a, 10a, 12, 12a, 12c, 13 to 13c, 15, 16, 18, 19, 21, and 25 of this title, repealing section 26 of this title, enacting provisions set out as notes under sections 1a, 4a, 6c, 6e, 6j, 6p, 7a, 13, 16a, 21, and 22 of this title, and repealing provisions set out as a note under section 4a of this title may be cited as the ‘Futures Trading Practices Act of 1992’.”

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99-641, § 1, Nov. 10, 1986, 100 Stat. 3556, provided that: “This Act [enacting section 2271a of this title, amending sections 2a, 6b, 6c, 7a, 13, 13a-1, 15, 16, 21, 23, 74, 87b, 1444, 1445b-3, and 1445c-2 of this title, sections 590h and 3831 of Title 16, Conservation, sections 606, 609, 621, 671, and 676 of Title 21, Food and Drugs, repealing section 14 of this title, and enacting provisions set out as notes under sections 20, 71, 76, 87b, and 2271a of this title and sections 601, 606, 609, 621, 671, and 676 of Title 21] may be cited as the ‘Futures Trading Act of 1986’.”

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 97-444, § 1, Jan. 11, 1983, 96 Stat. 2294, provided: “That this Act [enacting sections 2a, 12d, 25, and 26 of this title, amending sections 2, 4, 4a, 5, 6, 6a, 6c, 6d, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 7a, 8, 9, 12, 12a, 13, 13a-1, 13a-2, 13c, 16, 16a, 18, 20, 21, 23, and 612c-3 of this title, and enacting provisions set out as a note under section 2 of this title] may be cited as the ‘Futures Trading Act of 1982’.”

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-405, § 1, Sept. 30, 1978, 92 Stat. 865, provided: “That this Act [enacting sections 13a-2, 16a, and 23 of this title, amending sections 2, 4a, 6c, 6d, 6f, 6g, 6k, 6m, 6n, 6o, 7a, 8, 12, 12a, 12c, 13, 13a, 15, 16, 18, and 21 of this title and section 6001 of Title 18, Crimes and Criminal Procedure, repealing section 15a of this title, omitting sections 12-1 to 12-3 of this title, and enacting provisions set out as notes under sections 2 and 20 of this title] may be cited as the ‘Futures Trading Act of 1978’.”

SHORT TITLE OF 1974 AMENDMENT

Pub. L. 93-463, § 1, Oct. 23, 1974, 88 Stat. 1389, provided: “That this Act [enacting sections 4a, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 9a, 12-2, 13-3, 12c, 13a-1, 15a, 18, 19, 20, 21, and 22 of this title, amending sections 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6i, 7, 7a, 7b, 8, 9, 11, 12, 12-1, 12a, 12b, 13, 13a, 13b, 13c, 15, and 16 of this title and sections 5314, 5315, 5316, and 5108 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under sections 2, 4a, and 6a of this title] may be cited as the ‘Commodity Futures Trading Commission Act of 1974’.”

SAVINGS PROVISIONS FOR 2000 AMENDMENT

Pub. L. 106-554, § 1(a)(5) [title III, § 304], Dec. 21, 2000, 114 Stat. 2763, 2763A-457, provided that: “Nothing in this Act [see Short Title of 2000 Amendment note above] or the amendments made by this Act shall be construed as finding or implying that any swap agreement is or is not a security for any purpose under the securities laws. Nothing in this Act or the amendments made by this Act shall be construed as finding or implying that any swap agreement is or is not a futures contract or commodity option for any purpose under the Commodity Exchange Act [7 U.S.C. 1 et seq.]”

CONSTRUCTION OF 2000 AMENDMENT

Pub. L. 106-554, § 1(a)(5) [title I, § 122], Dec. 21, 2000, 114 Stat. 2763, 2763A-405, provided that: “Except as expressly provided in this Act [see Short Title of 2000 Amendment note above] or an amendment made by this Act, nothing in this Act or an amendment made by this Act supersedes, affects, or otherwise limits or expands the scope and applicability of laws governing the Securities and Exchange Commission.”

PURPOSES OF 2000 AMENDMENT

Pub. L. 106-554, § 1(a)(5) [§ 2], Dec. 21, 2000, 114 Stat. 2763, 2763A-366, provided that:

“The purposes of this Act [see Short Title of 2000 Amendment note above] are—

“(1) to reauthorize the appropriation for the Commodity Futures Trading Commission;

“(2) to streamline and eliminate unnecessary regulation for the commodity futures exchanges and other entities regulated under the Commodity Exchange Act [7 U.S.C. 1 et seq.];

“(3) to transform the role of the Commodity Futures Trading Commission to oversight of the futures markets;

“(4) to provide a statutory and regulatory framework for allowing the trading of futures on securities;

“(5) to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated;

“(6) to promote innovation for futures and derivatives and to reduce systemic risk by enhancing legal certainty in the markets for certain futures and derivatives transactions;

“(7) to reduce systemic risk and provide greater stability to markets during times of market disorder by allowing the clearing of transactions in over-the-counter derivatives through appropriately regulated clearing organizations; and

“(8) to enhance the competitive position of United States financial institutions and financial markets.”

REPORT TO CONGRESS

Pub. L. 106-554, § 1(a)(5) [title I, § 125], Dec. 21, 2000, 114 Stat. 2763, 2763A-411, provided that:

“(a) The Commodity Futures Trading Commission (in this section referred to as the ‘Commission’) shall undertake and complete a study of the Commodity Exchange Act [7 U.S.C. 1 et seq.] (in this section referred to as ‘the Act’) and the Commission’s rules, regulations and orders governing the conduct of persons required to be registered under the Act, not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000]. The study shall identify—

“(1) the core principles and interpretations of acceptable business practices that the Commission has adopted or intends to adopt to replace the provisions of the Act and the Commission’s rules and regulations thereunder;

“(2) the rules and regulations that the Commission has determined must be retained and the reasons therefor;

“(3) the extent to which the Commission believes it can effect the changes identified in paragraph (1) of this subsection through its exemptive authority under section 4(c) of the Act [7 U.S.C. 6(c)]; and

“(4) the regulatory functions the Commission currently performs that can be delegated to a registered futures association (within the meaning of the Act) and the regulatory functions that the Commission has determined must be retained and the reasons therefor.

“(b) In conducting the study, the Commission shall solicit the views of the public as well as Commission registrants, registered entities, and registered futures associations (all within the meaning of the Act).

“(c) The Commission shall transmit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report of the results of its study, which shall include an analysis of comments received.”

§ 1a. Definitions

As used in this chapter:

(1) Alternative trading system

The term ‘alternative trading system’ means an organization, association, or group of persons that—

(A) is registered as a broker or dealer pursuant to section 15(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(b)] (except paragraph (11) thereof);

(B) performs the functions commonly performed by an exchange (as defined in section 3(a)(1) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(1)]);

(C) does not—

(i) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on the alternative trading system; or

(ii) discipline subscribers other than by exclusion from trading; and

(D) is exempt from the definition of the term “exchange” under such section 3(a)(1) [15 U.S.C. 78c(a)(1)] by rule or regulation of the Securities and Exchange Commission on terms that require compliance with regulations of its trading functions.

(2) Board of trade

The term “board of trade” means any organized exchange or other trading facility.

(3) Commission

The term “Commission” means the Commodity Futures Trading Commission established under section 2(a)(2) of this title.

(4) Commodity

The term “commodity” means wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice, and all other goods and articles, except onions as provided in section 13-1 of this title, and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.

(5) Commodity pool operator

The term “commodity pool operator” means any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, except that the term does not include such persons not within the intent of the definition of the term as the Commission may specify by rule, regulation, or order.

(6) Commodity trading advisor

(A) In general

Except as otherwise provided in this paragraph, the term “commodity trading advisor” means any person who—

(i) for compensation or profit, engages in the business of advising others, either di-

rectly or through publications, writings, or electronic media, as to the value of or the advisability of trading in—

(I) any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility;

(II) any commodity option authorized under section 6c of this title; or

(III) any leverage transaction authorized under section 23 of this title; or

(ii) for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the activities referred to in clause (i).

(B) Exclusions

Subject to subparagraph (C), the term “commodity trading advisor” does not include—

(i) any bank or trust company or any person acting as an employee thereof;

(ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher;

(iii) any floor broker or futures commission merchant;

(iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees;

(v) the fiduciary of any defined benefit plan that is subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.);

(vi) any contract market or derivatives transaction execution facility; and

(vii) such other persons not within the intent of this paragraph as the Commission may specify by rule, regulation, or order.

(C) Incidental services

Subparagraph (B) shall apply only if the furnishing of such services by persons referred to in subparagraph (B) is solely incidental to the conduct of their business or profession.

(D) Advisors

The Commission, by rule or regulation, may include within the term “commodity trading advisor”, any person advising as to the value of commodities or issuing reports or analyses concerning commodities if the Commission determines that the rule or regulation will effectuate the purposes of this paragraph.

(7) Contract of sale

The term “contract of sale” includes sales, agreements of sale, and agreements to sell.

(8) Cooperative association of producers

The term “cooperative association of producers” means any cooperative association, corporate, or otherwise, not less than 75 percent in good faith owned or controlled, directly or indirectly, by producers of agricul-

tural products and otherwise complying with sections 291 and 292 of this title, including any organization acting for a group of such associations and owned or controlled by such associations, except that business done for or with the United States, or any agency thereof, shall not be considered either member or non-member business in determining the compliance of any such association with this chapter.

(9) Derivatives clearing organization

(A) In general

The term “derivatives clearing organization” means a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction—

(i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

(ii) arranges or provides, on a multi-lateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or

(iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.

(B) Exclusions

The term “derivatives clearing organization” does not include an entity, facility, system, or organization solely because it arranges or provides for—

(i) settlement, netting, or novation of obligations resulting from agreements, contracts, or transactions, on a bilateral basis and without a central counterparty;

(ii) settlement or netting of cash payments through an interbank payment system; or

(iii) settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

(10) Electronic trading facility

The term “electronic trading facility” means a trading facility that—

(A) operates by means of an electronic or telecommunications network; and

(B) maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility.

(11) Eligible commercial entity

The term “eligible commercial entity” means, with respect to an agreement, contract or transaction in a commodity—

(A) an eligible contract participant described in clause (i), (ii), (v), (vii), (viii), or (ix) of paragraph (12)(A) that, in connection with its business—

(i) has a demonstrable ability, directly or through separate contractual arrange-

ments, to make or take delivery of the underlying commodity;

(ii) incurs risks, in addition to price risk, related to the commodity; or

(iii) is a dealer that regularly provides risk management or hedging services to, or engages in market-making activities with, the foregoing entities involving transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity;

(B) an eligible contract participant, other than a natural person or an instrumentality, department, or agency of a State or local governmental entity, that—

(i) regularly enters into transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity; and

(ii) either—

(I) in the case of a collective investment vehicle whose participants include persons other than—

(aa) qualified eligible persons, as defined in Commission rule 4.7(a) (17 CFR 4.7(a));

(bb) accredited investors, as defined in Regulation D of the Securities and Exchange Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.] (17 CFR 230.501(a)), with total assets of \$2,000,000; or

(cc) qualified purchasers, as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(51)(A)];

in each case as in effect on December 21, 2000, has, or is one of a group of vehicles under common control or management having in the aggregate, \$1,000,000,000 in total assets; or

(II) in the case of other persons, has, or is one of a group of persons under common control or management having in the aggregate, \$100,000,000 in total assets; or

(C) such other persons as the Commission shall determine appropriate and shall designate by rule, regulation, or order.

(12) Eligible contract participant

The term “eligible contract participant” means—

(A) acting for its own account—

(i) a financial institution;

(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

- (iv) a commodity pool that—
 - (I) has total assets exceeding \$5,000,000; and
 - (II) is formed and operated by a person subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant);
- (v) a corporation, partnership, proprietorship, organization, trust, or other entity—
 - (I) that has total assets exceeding \$10,000,000;
 - (II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or
 - (III) that—
 - (aa) has a net worth exceeding \$1,000,000; and
 - (bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;
- (vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation—
 - (I) that has total assets exceeding \$5,000,000; or
 - (II) the investment decisions of which are made by—
 - (aa) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or this chapter;
 - (bb) a foreign person performing a similar role or function subject as such to foreign regulation;
 - (cc) a financial institution; or
 - (dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company;
- (vii)(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;
- (II) a multinational or supranational government entity; or
- (III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);

except that such term does not include an entity, instrumentality, agency, or depart-

ment referred to in subclause (I) or (III) of this clause unless (aa) the entity, instrumentality, agency, or department is a person described in clause (i), (ii), or (iii) of paragraph (11)(A) of this section; (bb) the entity, instrumentality, agency, or department owns and invests on a discretionary basis \$25,000,000 or more in investments; or (cc) the agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section 2(c)(2)(B)(ii) of this title;

(viii)(I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

(II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(b), 78q(h));

(III) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i));¹

(ix) a futures commission merchant subject to regulation under this chapter or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

(x) a floor broker or floor trader subject to regulation under this chapter in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

(xi) an individual who has total assets in an amount in excess of—

(I) \$10,000,000; or

(II) \$5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual;

(B)(i) a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A)

¹ So in original. The semicolon probably should be preceded by an additional closing parenthesis.

or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

(ii) an investment adviser subject to regulation under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], a commodity trading advisor subject to regulation under this chapter, a foreign person performing a similar role or function subject as such to foreign regulation, or a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

(C) any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.

(13) Excluded commodity

The term “excluded commodity” means—

(i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure;

(ii) any other rate, differential, index, or measure of economic or commercial risk, return, or value that is—

(I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or

(II) based solely on one or more commodities that have no cash market;

(iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or

(iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—

(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and

(II) associated with a financial, commercial, or economic consequence.

(14) Exempt commodity

The term “exempt commodity” means a commodity that is not an excluded commodity or an agricultural commodity.

(15) Financial institution

The term “financial institution” means—

(A) a corporation operating under the fifth undesignated paragraph of section 25 of the Federal Reserve Act (12 U.S.C. 603), commonly known as “an agreement corporation”;

(B) a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.), commonly known as an “Edge Act corporation”;

(C) an institution that is regulated by the Farm Credit Administration;

(D) a Federal credit union or State credit union (as defined in section 1752 of title 12);

(E) a depository institution (as defined in section 1813 of title 12);

(F) a foreign bank or a branch or agency of a foreign bank (each as defined in section 3101 of title 12);

(G) any financial holding company (as defined in section 1841 of title 12);

(H) a trust company; or

(I) a similarly regulated subsidiary or affiliate of an entity described in any of subparagraphs (A) through (H).

(16) Floor broker

The term “floor broker” means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market or derivatives transaction execution facility for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

(17) Floor trader

The term “floor trader” means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market or derivatives transaction execution facility for the meeting of persons similarly engaged, purchases, or sells solely for such person’s own account, any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility.

(18) Foreign futures authority

The term “foreign futures authority” means any foreign government, or any department, agency, governmental body, or regulatory organization empowered by a foreign government to administer or enforce a law, rule, or regulation as it relates to a futures or options matter, or any department or agency of a political subdivision of a foreign government empowered to administer or enforce a law, rule, or regulation as it relates to a futures or options matter.

(19) Future delivery

The term “future delivery” does not include any sale of any cash commodity for deferred shipment or delivery.

(20) Futures commission merchant

The term “futures commission merchant” means an individual, association, partnership, corporation, or trust that—

(A) is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility; and

(B) in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

(21) Hybrid instrument

The term “hybrid instrument” means a security having one or more payments indexed

to the value, level, or rate of, or providing for the delivery of, one or more commodities.

(22) Interstate commerce

The term “interstate commerce” means commerce—

(A) between any State, territory, or possession, or the District of Columbia, and any place outside thereof; or

(B) between points within the same state,² territory, or possession, or the District of Columbia, but through any place outside thereof, or within any territory or possession, or the District of Columbia.

(23) Introducing broker

The term “introducing broker” means any person (except an individual who elects to be and is registered as an associated person of a futures commission merchant) engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility who does not accept any money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.

(24) Member of a registered entity; member of a derivatives transaction execution facility

The term “member” means, with respect to a registered entity or derivatives transaction execution facility, an individual, association, partnership, corporation, or trust—

(A) owning or holding membership in, or admitted to membership representation on, the registered entity or derivatives transaction execution facility; or

(B) having trading privileges on the registered entity or derivatives transaction execution facility.

A participant in an alternative trading system that is designated as a contract market pursuant to section 7b-1 of this title is deemed a member of the contract market for purposes of transactions in security futures products through the contract market.

(25) Narrow-based security index

(A) The term “narrow-based security index” means an index—

(i) that has 9 or fewer component securities;

(ii) in which a component security comprises more than 30 percent of the index’s weighting;

(iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index’s weighting; or

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index’s weighting have an aggregate dollar value of average daily trading volume of less than \$50,000,000 (or in the case of an index with 15 or more component securities, \$30,000,000), except that if there are two or more securities with equal weighting that could be included in the cal-

culatation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index’s weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

(B) Notwithstanding subparagraph (A), an index is not a narrow-based security index if—

(i)(I) it has at least 9 component securities;

(II) no component security comprises more than 30 percent of the index’s weighting; and

(III) each component security is—

(aa) registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78l];

(bb) one of 750 securities with the largest market capitalization; and

(cc) one of 675 securities with the largest dollar value of average daily trading volume;

(ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before December 21, 2000;

(iii)(I) a contract of sale for future delivery on the index traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery on an index that was not a narrow-based security index; and

(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;

(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Securities and Exchange Commission;

(v) no more than 18 months have passed since December 21, 2000, and—

(I) it is traded on or subject to the rules of a foreign board of trade;

(II) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before December 21, 2000; and

(III) the conditions of such authorization continue to be met; or

(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Securities and Exchange Commission.

(C) Within 1 year after December 21, 2000, the Commission and the Securities and Exchange Commission jointly shall adopt rules or regulations that set forth the requirements under subparagraph (B)(iv).

(D) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days

² So in original. Probably should be capitalized.

over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (B) shall not be a narrow-based security index for the 3 following calendar months.

(E) For purposes of subparagraphs (A) and (B)—

(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

(ii) the Commission and the Securities and Exchange Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

(26) Option

The term “option” means an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”.

(27) Organized exchange

The term “organized exchange” means a trading facility that—

(A) permits trading—

(i) by or on behalf of a person that is not an eligible contract participant; or

(ii) by persons other than on a principal-to-principal basis; or

(B) has adopted (directly or through another nongovernmental entity) rules that—

(i) govern the conduct of participants, other than rules that govern the submission of orders or execution of transactions on the trading facility; and

(ii) include disciplinary sanctions other than the exclusion of participants from trading.

(28) Person

The term “person” imports the plural or singular, and includes individuals, associations, partnerships, corporations, and trusts.

(29) Registered entity

The term “registered entity” means—

(A) a board of trade designated as a contract market under section 7 of this title;

(B) a derivatives transaction execution facility registered under section 7a of this title;

(C) a derivatives clearing organization registered under section 7a-1 of this title; and

(D) a board of trade designated as a contract market under section 7b-1 of this title.

(30) Security

The term “security” means a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) or section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

(31) Security future

The term “security future” means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Ex-

change Act of 1934 [15 U.S.C. 78c(a)(12)] as in effect on January 11, 1983 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)] as in effect on January 11, 1983). The term “security future” does not include any agreement, contract, or transaction excluded from this chapter under section 2(c), 2(d), 2(f), or 2(g) of this title (as in effect on December 21, 2000) or sections 27 to 27f of this title.

(32) Security futures product

The term “security futures product” means a security future or any put, call, straddle, option, or privilege on any security future.

(33) Trading facility

(A) In general

The term “trading facility” means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system.

(B) Exclusions

The term “trading facility” does not include—

(i) a person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple bids and multiple offers within a predetermined, nondiscretionary automated trade matching and execution algorithm;

(ii) a government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering into, executing, or trading an agreement, contract, or transaction in government securities (as the terms “government securities dealer”, “government securities broker”, and “government securities” are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); or

(iii) facilities on which bids and offers, and acceptances of bids and offers effected on the facility, are not binding.

Any person, group of persons, dealer, broker, or facility described in clause (i) or (ii) is excluded from the meaning of the term “trading facility” for the purposes of this chapter without any prior specific approval, certification, or other action by the Commission.

(C) Special rule

A person or group of persons that would not otherwise constitute a trading facility shall not be considered to be a trading facility solely as a result of the submission to a

derivatives clearing organization of transactions executed on or through the person or group of persons.

(Sept. 21, 1922, ch. 369, §1a, as added Pub. L. 102-546, title IV, §404(a), Oct. 28, 1992, 106 Stat. 3625; amended Pub. L. 106-554, §1(a)(5) [title I, §§101, 123(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-366, 2763A-405.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in pars. (6)(B)(v) and (12)(A)(vi), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Securities Act of 1933, referred to in par. (11)(B)(ii)(I)(bb), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Investment Company Act of 1940, referred to in par. (12)(A)(iii), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in par. (12)(A)(vi)(II)(aa), (B)(ii), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§80b-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80b-20 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in par. (12)(A)(viii)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

Section 25A of the Federal Reserve Act, referred to in par. (15)(B), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 12 and Tables.

AMENDMENTS

2000—Par. (1). Pub. L. 106-554, §1(a)(5) [title I, §101(2)], added par. (1). Former par. (1) redesignated (2).

Par. (2). Pub. L. 106-554, §1(a)(5) [title I, §101(3)], added par. (2) and struck out heading and text of former par. (2). Text read as follows: “The term ‘board of trade’ means any exchange or association, whether incorporated or unincorporated, of persons who are engaged in the business of buying or selling any commodity or receiving the same for sale on consignment.”

Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (1) as (2). Former par. (2) redesignated (3).

Pars. (3), (4). Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Par. (5). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(1)(A)], inserted “or derivatives transaction execution facility” after “contract market”.

Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (4) as (5). Former par. (5) redesignated (6).

Par. (6). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(1)(A)], inserted “or derivatives transaction execution facility” after “contract market” in subpars. (A)(i)(I) and (B)(vi).

Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pars. (7), (8). Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated pars. (6) and (7) as (7) and (8), respectively. Former par. (8) redesignated (16).

Pars. (9) to (15). Pub. L. 106-554, §1(a)(5) [title I, §101(4)], added pars. (9) to (15). Former pars. (9) to (12) and (13) to (15) redesignated (17) to (20) and (22) to (24), respectively.

Par. (16). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(1)(A)], inserted “or derivatives transaction execution facility” after “contract market” in two places.

Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (8) as (16). Former par. (16) redesignated (28).

Par. (17). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(1)(A)], inserted “or derivatives transaction execution facility” after “contract market” in two places.

Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (9) as (17).

Pars. (18), (19). Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated pars. (10) and (11) as (18) and (19), respectively.

Par. (20). Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (12) as (20).

Par. (20)(A). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(1)(A)], inserted “or derivatives transaction execution facility” after “contract market”.

Par. (21). Pub. L. 106-554, §1(a)(5) [title I, §101(5)], added par. (21).

Par. (22). Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (13) as (22).

Par. (23). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(1)(A)], inserted “or derivatives transaction execution facility” after “contract market”.

Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (14) as (23).

Par. (24). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(1)(B)], substituted “registered entity” for “contract market” wherever appearing in heading and text and inserted concluding provisions.

Pub. L. 106-554, §1(a)(5) [title I, §101(6)], added par. (24) and struck out heading and text of former par. (24). Text read as follows: “The term ‘member of a contract market’ means an individual, association, partnership, corporation, or trust owning or holding membership in, or admitted to membership representation on, a contract market or given members’ trading privileges thereon.”

Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (15) as (24).

Pars. (25) to (27). Pub. L. 106-554, §1(a)(5) [title I, §101(6)], added pars. (25) to (27).

Par. (28). Pub. L. 106-554, §1(a)(5) [title I, §101(1)], redesignated par. (16) as (28).

Pars. (29) to (33). Pub. L. 106-554, §1(a)(5) [title I, §101(7)], added pars. (29) to (33).

EFFECTIVE DATE

Section 403 of Pub. L. 102-546 provided that: “Except as otherwise specifically provided in this Act [enacting this section and section 12e of this title, amending sections 2, 2a, 4, 4a, 6 to 6c, 6e to 6g, 6j, 6p, 7 to 9a, 10a, 12, 12a, 12c, 13 to 13c, 15, 16, 18, 19, 21, and 25 of this title, repealing section 26 of this title, enacting provisions set out as notes under sections 1a, 4a, 6c, 6e, 6j, 6p, 7a, 13, 16a, 21, and 22 of this title, and repealing provisions set out as a note under section 4a of this title], this Act and the amendments made by this Act shall become effective on the date of enactment of this Act [Oct. 28, 1992].”

§ 2. Jurisdiction of Commission; liability of principal for act of agent; Commodity Futures Trading Commission; transaction in interstate commerce

(a) Jurisdiction of Commission; Commodity Futures Trading Commission

(1) Jurisdiction of Commission

(A) In general

The Commission shall have exclusive jurisdiction, except to the extent otherwise provided in subparagraphs (C) and (D) of this

paragraph and subsections (c) through (i) of this section, with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”), and transactions involving contracts of sale of a commodity for future delivery, traded or executed on a contract market designated or derivatives transaction execution facility registered pursuant to section 7 or 7a of this title or any other board of trade, exchange, or market, and transactions subject to regulation by the Commission pursuant to section 23 of this title. Except as hereinabove provided, nothing contained in this section shall (I) supersede or limit the jurisdiction at any time conferred on the Securities and Exchange Commission or other regulatory authorities under the laws of the United States or of any State, or (II) restrict the Securities and Exchange Commission and such other authorities from carrying out their duties and responsibilities in accordance with such laws. Nothing in this section shall supersede or limit the jurisdiction conferred on courts of the United States or any State.

(B) Liability of principal for act of agent

The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(C) Designation of boards of trade as contract markets; contracts for future delivery; security futures products; filing with Board of Governors of Federal Reserve System; judicial review

Notwithstanding any other provision of law—

(i) This chapter shall not apply to and the Commission shall have no jurisdiction to designate a board of trade as a contract market for any transaction whereby any party to such transaction acquires any put, call, or other option on one or more securities (as defined in section 77b(1)¹ of title 15 or section 3(a)(10) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(10)] on January 11, 1983), including any group or index of such securities, or any interest therein or based on the value thereof.

(ii) This chapter shall apply to and the Commission shall have exclusive jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”) and transactions involving, and may designate a board of trade as a con-

tract market in, or register a derivatives transaction execution facility that trades or executes, contracts of sale (or options on such contracts) for future delivery of a group or index of securities (or any interest therein or based upon the value thereof): *Provided, however*, That no board of trade shall be designated as a contract market with respect to any such contracts of sale (or options on such contracts) for future delivery, and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery, unless the board of trade or the derivatives transaction execution facility, and the applicable contract, meet the following minimum requirements:

(I) Settlement of or delivery on such contract (or option on such contract) shall be effected in cash or by means other than the transfer or receipt of any security, except an exempted security under section 77c of title 15 or section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)] as in effect on January 11, 1983, (other than any municipal security, as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)] on January 11, 1983);

(II) Trading in such contract (or option on such contract) shall not be readily susceptible to manipulation of the price of such contract (or option on such contract), nor to causing or being used in the manipulation of the price of any underlying security, option on such security or option on a group or index including such securities; and

(III) Such group or index of securities shall not constitute a narrow-based security index.

(iii) If, in its discretion, the Commission determines that a stock index futures contract, notwithstanding its conformance with the requirements in clause (ii) of this subparagraph, can reasonably be used as a surrogate for trading a security (including a security futures product), it may, by order, require such contract and any option thereon be traded and regulated as security futures products as defined in section 3(a)(56) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(56)] and section 1a of this title subject to all rules and regulations applicable to security futures products under this chapter and the securities laws as defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)].

(iv) No person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under or² section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)]

¹ See References in Text note below.

² So in original. The word “or” probably should not appear.

as in effect on January 11, 1983 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)] on January 11, 1983), or except as provided in clause (ii) of this subparagraph or subparagraph (D), any group or index of such securities or any interest therein or based on the value thereof.

(v)(I) Notwithstanding any other provision of this chapter, any contract market in a stock index futures contract (or option thereon) other than a security futures product, or any derivatives transaction execution facility on which such contract or option is traded, shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for such stock index futures contract (or option thereon) other than security futures products.

(II) The Board may at any time request any contract market or derivatives transaction execution facility to set the margin for any stock index futures contract (or option thereon), other than for any security futures product, at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or derivatives transaction execution facility, or its clearing system, or to prevent systemic risk. If the contract market or derivatives transaction execution facility fails to do so within the time specified by the Board in its request, the Board may direct the contract market or derivatives transaction execution facility to alter or supplement the rules of the contract market or derivatives transaction execution facility as specified in the request.

(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority, relating to margin for any stock index futures contract (or option thereon), other than security futures products, under this clause to the Commission.

(IV) It shall be unlawful for any futures commission merchant to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on any security futures product unless such activities comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. 78g(c)(2)(B)].

(V) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 12a(9) of this title to direct a contract market or registered derivatives transaction execution facility, on finding an emergency to exist, to raise temporary margin levels on any futures contract, or option on the contract covered by this clause, or on any security futures product.

(VI) Any action taken by the Board, or by the Commission acting under the dele-

gation of authority under subclause III,³ under this clause directing a contract market to alter or supplement a contract market rule shall be subject to review only in the Court of Appeals where the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. The review shall be based on the examination of all information before the Board or the Commission, as the case may be, at the time the determination was made. The court reviewing the action of the Board or the Commission shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(D) Jurisdiction and authority of Securities and Exchange Commission over security futures; requirements for security futures trading; periodic or special examinations by Commission representatives

(i) Notwithstanding any other provision of this chapter, the Securities and Exchange Commission shall have jurisdiction and authority over security futures as defined in section 3(a)(55) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(55)], section 77b(a)(16) of title 15, section 80a-2(a)(52) of title 15, and section 80b-2(a)(27) of title 15, options on security futures, and persons effecting transactions in security futures and options thereon, and this chapter shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty"), contracts, and transactions involving, and may designate a board of trade as a contract market in, or register a derivatives transaction execution facility that trades or executes, a security futures product as defined in section 1a of this title: *Provided, however*, That, except as provided in clause (vi) of this subparagraph, no board of trade shall be designated as a contract market with respect to, or registered as a derivatives transaction execution facility for, any such contracts of sale for future delivery unless the board of trade and the applicable contract meet the following criteria:

(I) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, any security underlying the security future, including each component security of a narrow-based security index, is registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78l].

(II) If the security futures product is not cash settled, the board of trade on which the security futures product is traded has

³ So in original. Probably should be subclause "(III)".

arrangements in place with a clearing agency registered pursuant to section 17A of the Securities Exchange Act of 1934 [15 U.S.C. 78q-1] for the payment and delivery of the securities underlying the security futures product.

(III) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, the security future is based upon common stock and such other equity securities as the Commission and the Securities and Exchange Commission jointly determine appropriate.

(IV) The security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on a designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)], or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] and offset on another designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

(V) Only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] solicit, accept any order for, or otherwise deal in any transaction in or in connection with the security futures product.

(VI) The security futures product is subject to a prohibition against dual trading in section 6j of this title and the rules and regulations thereunder or the provisions of section 11(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78k(a)] and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] and the rules and regulations thereunder.

(VII) Trading in the security futures product is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(VIII) The board of trade on which the security futures product is traded has procedures in place for coordinated surveillance among such board of trade, any mar-

ket on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] of which such alternative trading system is a member has in place such procedures.

(IX) The board of trade on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subclause (VIII), except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] of which such alternative trading system is a member has rules to require such audit trails.

(X) The board of trade on which the security futures product is traded has in place procedures to coordinate trading halts between such board of trade and markets on which any security underlying the security futures product is traded and other markets on which any related security is traded, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)] or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] of which such alternative trading system is a member has rules to require such coordinated trading halts.

(XI) The margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. 78g(c)(2)(B)], except that nothing in this subclause shall be construed to prevent a board of trade from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

(ii) It shall be unlawful for any person to offer, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a security futures product unless—

(I) the transaction is conducted on or subject to the rules of a board of trade that—

(aa) has been designated by the Commission as a contract market in such security futures product; or

(bb) is a registered derivatives transaction execution facility for the security futures product that has provided a certification with respect to the security futures product pursuant to clause (vii);

(II) the contract is executed or consummated by, through, or with a member of the contract market or registered derivatives transaction execution facility; and

(III) the security futures product is evidenced by a record in writing which shows the date, the parties to such security futures product and their addresses, the property covered, and its price, and each contract market member or registered derivatives transaction execution facility member shall keep the record for a period of 3 years from the date of the transaction, or for a longer period if the Commission so directs, which record shall at all times be open to the inspection of any duly authorized representative of the Commission.

(iii)(I) Except as provided in subclause (II) but notwithstanding any other provision of this chapter, no person shall offer to enter into, enter into, or confirm the execution of any option on a security future.

(II) After 3 years after December 21, 2000, the Commission and the Securities and Exchange Commission may by order jointly determine to permit trading of options on any security future authorized to be traded under the provisions of this chapter and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

(iv)(I) All relevant records of a futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6)⁴ of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b-1 of this title shall be subject to such reasonable periodic or special examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter, and the Commission, before conducting any such examination, shall give notice to the Securities and Exchange Commission of the proposed examination and consult with the Securities and Exchange Commission concerning the feasibility and desirability of coordinating the examination with examinations conducted by the Securities and Exchange Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for the registrant or board of trade.

(II) The Commission shall notify the Securities and Exchange Commission of any ex-

amination conducted of any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6)⁴ of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b-1 of this title, and, upon request, furnish to the Securities and Exchange Commission any examination report and data supplied to or prepared by the Commission in connection with the examination.

(III) Before conducting an examination under subclause (I), the Commission shall use the reports of examinations, unless the information sought is unavailable in the reports, of any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6)⁴ of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b-1 of this title that is made by the Securities and Exchange Commission, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3(a)), or a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).

(IV) Any records required under this subsection for a futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, associated person exempt from registration pursuant to section 6k(6)⁴ of this title, or board of trade designated as a contract market in a security futures product pursuant to section 7b-1 of this title, shall be limited to records with respect to accounts, agreements, contracts, and transactions involving security futures products.

(v)(I) The Commission and the Securities and Exchange Commission, by rule, regulation, or order, may jointly modify the criteria specified in subclause (I) or (III) of clause (i), including the trading of security futures based on securities other than equity securities, to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(II) The Commission and the Securities and Exchange Commission, by order, may jointly exempt any person from compliance with the criterion specified in clause (i)(IV) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

⁴ Probably should refer to the second par. (5) of section 6k.

(vi)(I) Notwithstanding clauses (i) and (vii), until the compliance date, a board of trade shall not be required to meet the criterion specified in clause (i)(IV).

(II) The Commission and the Securities and Exchange Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

(III) For purposes of this clause, the term "compliance date" means the later of—

(aa) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all designated contract markets and registered derivatives transaction execution facilities equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)] and any national securities associations registered pursuant to section 15A(a) of such Act [15 U.S.C. 78o-3(a)]; or

(bb) 2 years after the date on which trading in any security futures product commences under this chapter.

(vii) It shall be unlawful for a board of trade to trade or execute a security futures product unless the board of trade has provided the Commission with a certification that the specific security futures product and the board of trade, as applicable, meet the criteria specified in subclauses (I) through (XI) of clause (i), except as otherwise provided in clause (vi).

(E) Obligation to address security futures products traded on foreign exchanges

(i) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Securities and Exchange Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

(ii) The rules, regulations, or orders adopted under clause (i) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflects.

(F) Security futures products traded on foreign boards of trade

(i) Nothing in this chapter is intended to prohibit a futures commission merchant from carrying security futures products traded on or subject to the rules of a foreign board of trade in the accounts of persons located outside of the United States.

(ii) Nothing in this chapter is intended to prohibit any eligible contract participant lo-

cated in the United States from purchasing or carrying securities futures products traded on or subject to the rules of a foreign board of trade, exchange, or market to the same extent such person may be authorized to purchase or carry other securities traded on a foreign board of trade, exchange, or market so long as any underlying security for such security futures products is traded principally on, by, or through any exchange or market located outside the United States.

(2) Establishment of Commodity Futures Trading Commission; composition; terms of Commissioners

(A) There is hereby established, as an independent agency of the United States Government, a Commodity Futures Trading Commission. The Commission shall be composed of five Commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. In nominating persons for appointment, the President shall—

(i) select persons who shall each have demonstrated knowledge in futures trading or its regulation, or the production, merchandising, processing or distribution of one or more of the commodities or other goods and articles, services, rights, and interests covered by this chapter; and

(ii) seek to ensure that the demonstrated knowledge of the Commissioners is balanced with respect to such areas.

Not more than three of the members of the Commission shall be members of the same political party. Each Commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (i) any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the Commissioners first taking office after the enactment of this paragraph shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years.

(B) The President shall appoint, by and with the advice and consent of the Senate, a member of the Commission as Chairman, who shall serve as Chairman at the pleasure of the President. An individual may be appointed as Chairman at the same time that person is appointed as a Commissioner. The Chairman shall be the chief administrative officer of the Commission and shall preside at hearings before the Commission. At any time, the President may appoint, by and with the advice and consent of the Senate, a different Chairman, and the Commissioner previously appointed as Chairman may complete that Commissioner's term as a Commissioner.

(3) Vacancies

A vacancy in the Commission shall not impair the right of the remaining Commissioners to exercise all the powers of the Commission.

(4) General Counsel

The Commission shall have a General Counsel, who shall be appointed by the Commission and serve at the pleasure of the Commission. The General Counsel shall report directly to the Commission and serve as its legal advisor. The Commission shall appoint such other attorneys as may be necessary, in the opinion of the Commission, to assist the General Counsel, represent the Commission in all disciplinary proceedings pending before it, represent the Commission in courts of law whenever appropriate, assist the Department of Justice in handling litigation concerning the Commission in courts of law, and perform such other legal duties and functions as the Commission may direct.

(5) Executive Director

The Commission shall have an Executive Director, who shall be appointed by the Commission and serve at the pleasure of the Commission. The Executive Director shall report directly to the Commission and perform such functions and duties as the Commission may prescribe.

(6) Powers and Functions of Chairman

(A) Except as otherwise provided in this paragraph and in paragraphs (4) and (5) of this subsection, the executive and administrative functions of the Commission, including functions of the Commission with respect to the appointment and supervision of personnel employed under the Commission, the distribution of business among such personnel and among administrative units of the Commission, and the use and expenditure of funds, according to budget categories, plans, programs, and priorities established and approved by the Commission, shall be exercised solely by the Chairman.

(B) In carrying out any of his functions under the provisions of this paragraph, the Chairman shall be governed by general policies, plans, priorities, and budgets approved by the Commission and by such regulatory decisions, findings, and determination as the Commission may by law be authorized to make.

(C) The appointment by the Chairman of the heads of major administrative units under the Commission shall be subject to the approval of the Commission.

(D) Personnel employed regularly and full time in the immediate offices of Commissioners other than the Chairman shall not be affected by the provisions of this paragraph.

(E) There are hereby reserved to the Commission its functions with respect to revising budget estimates and with respect to determining the distribution of appropriated funds according to major programs and purposes.

(F) The Chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any functions of the Chairman under this paragraph.

(7) Appointment and compensation**(A) In general**

The Commission may appoint and fix the compensation of such officers, attorneys,

economists, examiners, and other employees as may be necessary for carrying out the functions of the Commission under this chapter.

(B) Rates of pay

Rates of basic pay for all employees of the Commission may be set and adjusted by the Commission without regard to chapter 51 or subchapter III of chapter 53 of title 5.

(C) Comparability**(i) In general**

The Commission may provide additional compensation and benefits to employees of the Commission if the same type of compensation or benefits are provided by any agency referred to in section 1833b(a) of title 12 or could be provided by such an agency under applicable provisions of law (including rules and regulations).

(ii) Consultation

In setting and adjusting the total amount of compensation and benefits for employees, the Commission shall consult with, and seek to maintain comparability with, the agencies referred to in section 1833b(a) of title 12.

(8) Conflict of interest

No Commissioner or employee of the Commission shall accept employment or compensation from any person, exchange, or clearinghouse subject to regulation by the Commission under this chapter during his term of office, nor shall he participate, directly or indirectly, in any registered entity operations or transactions of a character subject to regulation by the Commission.

(9) Liaison with Department of Agriculture; communications with Department of the Treasury, Federal Reserve Board, and Securities and Exchange Commission; application by a board of trade for designation as a contract market for future delivery of securities

(A) The Commission shall, in cooperation with the Secretary of Agriculture, maintain a liaison between the Commission and the Department of Agriculture. The Secretary shall take such steps as may be necessary to enable the Commission to obtain information and utilize such services and facilities of the Department of Agriculture as may be necessary in order to maintain effectively such liaison. In addition, the Secretary shall appoint a liaison officer, who shall be an employee of the Office of the Secretary, for the purpose of maintaining a liaison between the Department of Agriculture and the Commission. The Commission shall furnish such liaison officer appropriate office space within the offices of the Commission and shall allow such liaison officer to attend and observe all deliberations and proceedings of the Commission.

(B)(i) The Commission shall maintain communications with the Department of the Treasury, the Board of Governors of the Federal Reserve System, and the Securities and Exchange Commission for the purpose of keep-

ing such agencies fully informed of Commission activities that relate to the responsibilities of those agencies, for the purpose of seeking the views of those agencies on such activities, and for considering the relationships between the volume and nature of investment and trading in contracts of sale of a commodity for future delivery and in securities and financial instruments under the jurisdiction of such agencies.

(ii) When a board of trade applies for designation or registration as a contract market or derivatives transaction execution facility involving transactions for future delivery of any security issued or guaranteed by the United States or any agency thereof, the Commission shall promptly deliver a copy of such application to the Department of the Treasury and the Board of Governors of the Federal Reserve System. The Commission may not designate or register a board of trade as a contract market or derivatives transaction execution facility based on such application until forty-five days after the date the Commission delivers the application to such agencies or until the Commission receives comments from each of such agencies on the application, whichever period is shorter. Any comments received by the Commission from such agencies shall be included as part of the public record of the Commission's designation proceeding. In designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this chapter (including without limitation emergency action under section 12a(9) of this title) with respect to such transactions, the Commission shall take into consideration all comments it receives from the Department of the Treasury and the Board of Governors of the Federal Reserve System and shall consider the effect that any such designation, registration, suspension, revocation, or action may have on the debt financing requirements of the United States Government and the continued efficiency and integrity of the underlying market for government securities.

(iii) The provisions of this subparagraph shall not create any rights, liabilities, or obligations upon which actions may be brought against the Commission.

(10) Transmittal of budget requests and legislative recommendations to congressional committees

(A) Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry.

(B) Whenever the Commission transmits any legislative recommendations, or testimony, or comments on legislation to the President or the Office of Management and Budget, it shall

concurrently transmit copies thereof to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. No officer or agency of the United States shall have any authority to require the Commission to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Commission voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Commission shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

(C) Whenever the Commission issues for official publication any opinion, release, rule, order, interpretation, or other determination on a matter, the Commission shall provide that any dissenting, concurring, or separate opinion by any Commissioner on the matter be published in full along with the Commission opinion, release, rule, order, interpretation, or determination.

(11) Seal

The Commission shall have an official seal, which shall be judicially noticed.

(12) Rules and regulations

The Commission is authorized to promulgate such rules and regulations as it deems necessary to govern the operating procedures and conduct of the business of the Commission.

(b) Transaction in interstate commerce

For the purposes of this chapter (but not in any wise limiting the foregoing definition of interstate commerce) a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the commodity trade whereby commodities and commodity products and by-products thereof are sent from one State, with the expectation that they will end their transit, after purchase, in another, including in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this chapter. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

(c) Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities

(1) In general

Except as provided in paragraph (2), nothing in this chapter (other than section 7a (to the extent provided in section 7a(g) of this title), 7a-1, 7a-3, or 16(e)(2)(B) of this title) governs

or applies to an agreement, contract, or transaction in—

- (A) foreign currency;
- (B) government securities;
- (C) security warrants;
- (D) security rights;
- (E) resales of installment loan contracts;
- (F) repurchase transactions in an excluded commodity; or
- (G) mortgages or mortgage purchase commitments.

(2) Commission jurisdiction

(A) Agreements, contracts, and transactions traded on an organized exchange

This chapter applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction described in paragraph (1) that is—

- (i) a contract of sale of a commodity for future delivery (or an option on such a contract), or an option on a commodity (other than foreign currency or a security or a group or index of securities), that is executed or traded on an organized exchange; or
- (ii) an option on foreign currency executed or traded on an organized exchange that is not a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)].

(B) Agreements, contracts, and transactions in retail foreign currency

This chapter applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—

- (i) is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78f(a)]); and
- (ii) is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—

- (I) a financial institution;
- (II) a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5) or a futures commission merchant registered under this chapter;
- (III) an associated person of a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o-5), or an affiliated person of a futures commission merchant registered under this chapter, concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(b), 78q(h)) or section 6f(c)(2)(B) of this title;
- (IV) an insurance company described in section 1a(12)(A)(ii) of this title, or a

regulated subsidiary or affiliate of such an insurance company;

(V) a financial holding company (as defined in section 1841 of title 12); or

(VI) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934 [15 U.S.C. 78q(i)]).

(C) Notwithstanding subclauses (II) and (III) of subparagraph (B)(ii), agreements, contracts, or transactions described in subparagraph (B) shall be subject to sections 6b, 6c(b), 9, 15, and 13b (to the extent that sections 9, 15, and 13b of this title prohibit manipulation of the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any market), 13a-1, 13a-2, and 12(a) of this title if they are entered into by a futures commission merchant or an affiliate of a futures commission merchant that is not also an entity described in subparagraph (B)(ii) of this paragraph.

(d) Excluded derivative transactions

(1) In general

Nothing in this chapter (other than section 7a-1 or 16(e)(2)(B) of this title⁵ governs or applies to an agreement, contract, or transaction in an excluded commodity if—

(A) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction; and

(B) the agreement, contract, or transaction is not executed or traded on a trading facility.

(2) Electronic trading facility exclusion

Nothing in this chapter (other than section 7a (to the extent provided in section 7a(g) of this title), 7a-1, 7a-3, or 16(e)(2)(B) of this title) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

(A) the agreement, contract, or transaction is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii) of this title;

(B) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants described in subparagraph (A), (B)(ii), or (C) of section 1a(12) of this title⁶ at the time at which the persons enter into the agreement, contract, or transaction; and

(C) the agreement, contract, or transaction is executed or traded on an electronic trading facility.

(e) Excluded electronic trading facilities

(1) In general

Nothing in this chapter (other than section 16(e)(2)(B) of this title) governs or is applicable to an electronic trading facility that limits

⁵So in original. Probably should be followed by a closing parenthesis.

⁶So in original. The closing parenthesis probably should not appear.

transactions authorized to be conducted on its facilities to those satisfying the requirements of subsection (d)(2), (g), or (h)(3) of this section.

(2) Effect on authority to establish and operate

Nothing in this chapter shall prohibit a board of trade designated by the Commission as a contract market or derivatives transaction execution facility, or operating as an exempt board of trade from establishing and operating an electronic trading facility excluded under this chapter pursuant to paragraph (1).

(3) Effect on transactions

No failure by an electronic trading facility to limit transactions as required by paragraph (1) of this subsection or to comply with subsection (h)(5) of this section shall in itself affect the legality, validity, or enforceability of an agreement, contract, or transaction entered into or traded on the electronic trading facility or cause a participant on the system to be in violation of this chapter.

(4) Special rule

A person or group of persons that would not otherwise constitute a trading facility shall not be considered to be a trading facility solely as a result of the submission to a derivatives clearing organization of transactions executed on or through the person or group of persons.

(f) Exclusion for qualifying hybrid instruments

(1) In general

Nothing in this chapter (other than section 16(e)(2)(B) of this title) governs or is applicable to a hybrid instrument that is predominantly a security.

(2) Predominance

A hybrid instrument shall be considered to be predominantly a security if—

(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with delivery of the hybrid instrument;

(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to this chapter.

(3) Mark-to-market margining requirements

For the purposes of paragraph (2)(C), mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to

secure the repayment obligations of the issuer under the secured debt instrument.

(g) Excluded swap transactions

No provision of this chapter (other than section 7a (to the extent provided in section 7a(g) of this title), 7a-1, 7a-3, or 16(e)(2) of this title) shall apply to or govern any agreement, contract, or transaction in a commodity other than an agricultural commodity if the agreement, contract, or transaction is—

(1) entered into only between persons that are eligible contract participants at the time they enter into the agreement, contract, or transaction;

(2) subject to individual negotiation by the parties; and

(3) not executed or traded on a trading facility.

(h) Legal certainty for certain transactions in exempt commodities

(1) Except as provided in paragraph (2), nothing in this chapter shall apply to a contract, agreement, or transaction in an exempt commodity which—

(A) is entered into solely between persons that are eligible contract participants at the time the persons enter into the agreement, contract, or transaction; and

(B) is not entered into on a trading facility.

(2) An agreement, contract, or transaction described in paragraph (1) of this subsection shall be subject to—

(A) sections 7a-1 and 16(e)(2)(B) of this title;

(B) sections 6b, 6o, 9, 15, 13b, 13a-1, 13a-2, and 12a of this title, and the regulations of the Commission pursuant to section 6c(b) of this title proscribing fraud in connection with commodity option transactions, to the extent the agreement, contract, or transaction is not between eligible commercial entities (unless one of the entities is an instrumentality, department, or agency of a State or local governmental entity) and would otherwise be subject to such sections and regulations; and

(C) sections 9, 15, 13b, 13a-1, 13a-2, 12a, and 13(a)(2) of this title, to the extent such sections prohibit manipulation of the market price of any commodity in interstate commerce and the agreement, contract, or transaction would otherwise be subject to such sections.

(3) Except as provided in paragraph (4), nothing in this chapter shall apply to an agreement, contract, or transaction in an exempt commodity which is—

(A) entered into on a principal-to-principal basis solely between persons that are eligible commercial entities at the time the persons enter into the agreement, contract, or transaction; and

(B) executed or traded on an electronic trading facility.

(4) An agreement, contract, or transaction described in paragraph (3) of this subsection shall be subject to—

(A) sections 7a (to the extent provided in section 7a(g) of this title), 7a-1, 7a-3, and 16(e)(2)(B) of this title;

(B) sections 6b and 6o of this title and the regulations of the Commission pursuant to section 6c(b) of this title proscribing fraud in connection with commodity option transactions to the extent the agreement, contract, or transaction would otherwise be subject to such sections and regulations;

(C) sections 9, 15, and 13(a)(2) of this title, to the extent such sections prohibit manipulation of the market price of any commodity in interstate commerce and to the extent the agreement, contract, or transaction would otherwise be subject to such sections; and

(D) such rules and regulations as the Commission may prescribe if necessary to ensure timely dissemination by the electronic trading facility of price, trading volume, and other trading data to the extent appropriate, if the Commission determines that the electronic trading facility performs a significant price discovery function for transactions in the cash market for the commodity underlying any agreement, contract, or transaction executed or traded on the electronic trading facility.

(5) An electronic trading facility relying on the exemption provided in paragraph (3) shall—

(A) notify the Commission of its intention to operate an electronic trading facility in reliance on the exemption set forth in paragraph (3), which notice shall include—

(i) the name and address of the facility and a person designated to receive communications from the Commission;

(ii) the commodity categories that the facility intends to list or otherwise make available for trading on the facility in reliance on the exemption set forth in paragraph (3);

(iii) certifications that—

(I) no executive officer or member of the governing board of, or any holder of a 10 percent or greater equity interest in, the facility is a person described in any of subparagraphs (A) through (H) of section 12a(2) of this title;

(II) the facility will comply with the conditions for exemption under this paragraph; and

(III) the facility will notify the Commission of any material change in the information previously provided by the facility to the Commission pursuant to this paragraph; and

(iv) the identity of any derivatives clearing organization to which the facility transmits or intends to transmit transaction data for the purpose of facilitating the clearance and settlement of transactions conducted on the facility in reliance on the exemption set forth in paragraph (3);

(B)(i)(I) provide the Commission with access to the facility's trading protocols and electronic access to the facility with respect to transactions conducted in reliance on the exemption set forth in paragraph (3); or

(II) provide such reports to the Commission regarding transactions executed on the facility in reliance on the exemption set forth in paragraph (3) as the Commission may from time to time request to enable the Commis-

sion to satisfy its obligations under this chapter;

(ii) maintain for 5 years, and make available for inspection by the Commission upon request, records of activities related to its business as an electronic trading facility exempt under paragraph (3), including—

(I) information relating to data entry and transaction details sufficient to enable the Commission to reconstruct trading activity on the facility conducted in reliance on the exemption set forth in paragraph (3); and

(II) the name and address of each participant on the facility authorized to enter into transactions in reliance on the exemption set forth in paragraph (3); and

(iii) upon special call by the Commission, provide to the Commission, in a form and manner and within the period specified in the special call, such information related to its business as an electronic trading facility exempt under paragraph (3), including information relating to data entry and transaction details in respect of transactions entered into in reliance on the exemption set forth in paragraph (3), as the Commission may determine appropriate—

(I) to enforce the provisions specified in subparagraphs (B) and (C) of paragraph (4);

(II) to evaluate a systemic market event; or

(III) to obtain information requested by a Federal financial regulatory authority in order to enable the regulator to fulfill its regulatory or supervisory responsibilities;

(C)(i) upon receipt of any subpoena issued by or on behalf of the Commission to any foreign person who the Commission believes is conducting or has conducted transactions in reliance on the exemption set forth in paragraph (3) on or through the electronic trading facility relating to the transactions, promptly notify the foreign person of, and transmit to the foreign person, the subpoena in a manner reasonable under the circumstances, or as specified by the Commission; and

(ii) if the Commission has reason to believe that a person has not timely complied with a subpoena issued by or on behalf of the Commission pursuant to clause (i), and the Commission in writing has directed that a facility relying on the exemption set forth in paragraph (3) deny or limit further transactions by the person, the facility shall deny that person further trading access to the facility or, as applicable, limit that person's access to the facility for liquidation trading only;

(D) comply with the requirements of this paragraph applicable to the facility and require that each participant, as a condition of trading on the facility in reliance on the exemption set forth in paragraph (3), agree to comply with all applicable law;

(E) have a reasonable basis for believing that participants authorized to conduct transactions on the facility in reliance on the exemption set forth in paragraph (3) are eligible commercial entities; and

(F) not represent to any person that the facility is registered with, or designated, recog-

nized, licensed, or approved by the Commission.

(6) A person named in a subpoena referred to in paragraph (5)(C) that believes the person is or may be adversely affected or aggrieved by action taken by the Commission under this section, shall have the opportunity for a prompt hearing after the Commission acts under procedures that the Commission shall establish by rule, regulation, or order.

(i) Application of commodity futures laws

(1) No provision of this chapter shall be construed as implying or creating any presumption that—

(A) any agreement, contract, or transaction that is excluded from this chapter under subsection (c), (d), (e), (f), or (g) of this section or title IV of the Commodity Futures Modernization Act of 2000 [7 U.S.C. 27 to 27f], or exempted under subsection (h) of this section or section 6(c) of this title; or

(B) any agreement, contract, or transaction, not otherwise subject to this chapter, that is not so excluded or exempted,

is or would otherwise be subject to this chapter.

(2) No provision of, or amendment made by, the Commodity Futures Modernization Act of 2000 shall be construed as conferring jurisdiction on the Commission with respect to any such agreement, contract, or transaction, except as expressly provided in section 7a of this title (to the extent provided in section 7a(g) of this title), 7a-1 of this title, or 7a-3 of this title.

(Sept. 21, 1922, ch. 369, § 2, 42 Stat. 998; June 15, 1936, ch. 545, §§ 2, 3, 49 Stat. 1491; Apr. 7, 1938, ch. 108, 52 Stat. 205; Oct. 9, 1940, ch. 786, § 1, 54 Stat. 1059; Aug. 28, 1954, ch. 1041, title VII, § 710(a), 68 Stat. 913; July 26, 1955, ch. 382, § 1, 69 Stat. 375; Pub. L. 90-258, § 1, Feb. 19, 1968, 82 Stat. 26; Pub. L. 90-418, July 23, 1968, 82 Stat. 413; Pub. L. 93-463, title I, § 101(a), title II, §§ 201, 202, Oct. 23, 1974, 88 Stat. 1389, 1395; Pub. L. 95-405, § 2, Sept. 30, 1978, 92 Stat. 865; Pub. L. 97-444, title I, § 101, title II, §§ 201, 202, Jan. 11, 1983, 96 Stat. 2294, 2297, 2298; Pub. L. 99-641, title I, § 110(1), Nov. 10, 1986, 100 Stat. 3561; Pub. L. 102-546, title II, §§ 209(b)(1), 215, 226, title IV, § 404(b), title V, § 501, Oct. 28, 1992, 106 Stat. 3606, 3611, 3618, 3628; Pub. L. 106-554, § 1(a)(5) [title I, §§ 102-105(b), 106, 107, 123(a)(2), title II, § 251(a), (b), (i), (j)], Dec. 21, 2000, 114 Stat. 2763, 2763A-376 to 2763A-379, 2763A-382, 2763A-405, 2763A-436, 2763A-441, 2763A-445; Pub. L. 107-171, title X, § 10702(a), May 13, 2002, 116 Stat. 516.)

REFERENCES IN TEXT

Section 77b(1) of title 15, referred to in subsec. (a)(1)(C)(i), was redesignated section 77b(a)(1) of title 15 by Pub. L. 104-290, title I, § 106(a)(1), Oct. 11, 1996, 110 Stat. 3424.

The Securities Exchange Act of 1934, referred to in subsec. (a)(1)(D)(i)(VI), (iii)(II), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Commodity Futures Modernization Act of 2000, referred to in subsec. (i)(1)(A), (2), is H.R. 5660, as enacted by Pub. L. 106-554, § 1(a)(5), Dec. 21, 2000, 114 Stat. 2763, 2763A-365. Title IV of the Act, known as the Legal Certainty for Bank Products Act of 2000, is classified to

sections 27 to 27f of this title. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of this title, and Tables.

CODIFICATION

Subsec. (a)(1)(B) of this section was formerly classified to section 4 of this title. Subsec. (a)(1)(C) of this section was formerly classified to section 2a of this title. Subsec. (a)(2) to (11) of this section was formerly classified to section 4a of this title. Subsec. (b) of this section was formerly classified to section 3 of this title.

AMENDMENTS

2002—Subsec. (a)(7) to (12). Pub. L. 107-171 added par. (7) and redesignated former pars. (7) to (11) as (8) to (12), respectively.

2000—Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(A)], inserted section catchline.

Subsec. (a). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(A)], inserted headings for subsec. (a) and par. (1).

Subsec. (a)(1)(A). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(B)(i)(II)], substituted “contract market designated or derivatives transaction execution facility registered pursuant to section 7 or 7a of this title” for “contract market designated pursuant to section 7 of this title”.

Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(B)(i)(I)], which directed substitution of “subparagraphs (C) and (D) of this paragraph and subsections (c) through (i) of this section” for “subparagraph (B) of this subparagraph”, was executed by making the substitution for “subparagraph (B) of this paragraph” to reflect the probable intent of Congress.

Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(A)], inserted heading and struck out “(i)” before “The Commission shall have”.

Subsec. (a)(1)(A)(ii). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(B)(i)(III)], struck out cl. (ii) which read as follows: “Nothing in this chapter shall be deemed to govern or in any way be applicable to transactions in foreign currency, security warrants, security rights, resales of installment loan contracts, repurchase options, government securities, or mortgages and mortgage purchase commitments, unless such transactions involve the sale thereof for future delivery conducted on a board of trade.”

Subsec. (a)(1)(B). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(B)(i)(IV)], redesignated subsec. (a)(1)(A)(iii) as subsec. (a)(1)(B) and inserted heading. Former subsec. (a)(1)(B) redesignated (a)(1)(C).

Subsec. (a)(1)(C). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(B)(ii)(I)], redesignated subpar. (B) as (C).

Subsec. (a)(1)(C)(i). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(ii). Pub. L. 106-554, § 1(a)(5) [title II, § 251(a)(1)(A)(iii)], substituted “or the derivatives transaction execution facility, and the applicable contract, meet” for “making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets” in introductory provisions.

Pub. L. 106-554, § 1(a)(5) [title II, § 251(a)(1)(A)(ii)], which directed insertion of “, and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery,” after “contracts) for future delivery”, was executed by making the insertion in the proviso in introductory provisions to reflect the probable intent of Congress.

Pub. L. 106-554, § 1(a)(5) [title II, § 251(a)(1)(A)(i)], inserted “or register a derivatives transaction execution facility that trades or executes,” after “contract market in,” in introductory provisions.

Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(ii)(III). Pub. L. 106-554, § 1(a)(5) [title II, § 251(a)(1)(A)(iv)], added subcl. (III) and struck out

former subcl. (III) which read as follows: “Such group or index of securities shall be predominately composed of the securities of unaffiliated issuers and shall be a widely published measure of, and shall reflect, the market for all publicly traded equity or debt securities or a substantial segment thereof, or shall be comparable to such measure.”

Subsec. (a)(1)(C)(iii). Pub. L. 106-554, §1(a)(5) [title II, §251(a)(1)(B), (C)], added cl. (iii) and struck out former cl. (iii) which read as follows: “Upon application by a board of trade for designation as a contract market with respect to any contract of sale (or option on such contract) for future delivery involving a group or index of securities, the Commission shall provide an opportunity for public comment on whether such contracts (or options on such contracts) meet the minimum requirements set forth in clause (ii) of this subparagraph.”

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(iv). Pub. L. 106-554, §1(a)(5) [title II, §251(a)(1)(C), (D)], redesignated cl. (v) as (iv) and struck out former cl. (iv) which related to consultation by the Commission with, and the authority of, the Securities and Exchange Commission with respect to approval of any application by a Board of Trade for designation as a contract market with respect to any contract of sale (or option of such contract) for future delivery of a group or index of securities.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(III)], adjusted margins.

Subsec. (a)(1)(C)(v). Pub. L. 106-554, §1(a)(5) [title II, §251(b)(2)], redesignated cl. (vi) as (v), added subcls. (I) to (V), and struck out former subcls. (I) to (IV) which required any contract market in a stock index futures contract (or option thereon) to file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin for the stock index futures contract (or option thereon), authorized the Board to request any contract market to set the margins at certain levels, authorized the Board to delegate its authority under this clause to the Commission, and preserved the authority of the Commission to raise temporary emergency margin levels.

Pub. L. 106-554, §1(a)(5) [title II, §251(a)(1)(D)], redesignated cl. (v) as (iv).

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(B)(ii)(II), (III)], struck out “section 77c of title 15” after “exempted security under”, inserted “or subparagraph (D)” after “subparagraph”, and adjusted margins.

Subsec. (a)(1)(C)(vi). Pub. L. 106-554, §1(a)(5) [title II, §251(b)(2)], redesignated cl. (vi) as (v).

Pub. L. 106-554, §1(a)(5) [title II, §251(b)(1)], redesignated subcl. (V) as (VI).

Subsec. (a)(1)(D). Pub. L. 106-554, §1(a)(5) [title II, §251(a)(2)], added subpar. (D).

Subsec. (a)(1)(E). Pub. L. 106-554, §1(a)(5) [title II, §251(i)], added subpar. (E).

Subsec. (a)(1)(F). Pub. L. 106-554, §1(a)(5) [title II, §251(j)], added subpar. (F).

Subsec. (a)(2) to (6). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(E)], adjusted margins.

Subsec. (a)(7). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(C), (E)], substituted “registered entity” for “contract market” and adjusted margins.

Subsec. (a)(8). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(E)], adjusted margins.

Subsec. (a)(8)(B)(ii). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(D)(iii)], in last sentence, substituted “designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this chapter (including without limitation emergency action under section 12a(9) of this title)” for “designating, or refusing, suspending, or revoking the designation of, a board of trade as a contract market involving transactions for future delivery referred to in this clause or in considering possible emergency action

under section 12a(9) of this title” and “designation, registration, suspension, revocation, or action” for “designation, suspension, revocation, or emergency action”.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(D)(ii)], substituted “designate or register a board of trade as a contract market or derivatives transaction execution facility” for “designate a board of trade as a contract market” in second sentence.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(D)(i)], substituted “designation or registration as a contract market or derivatives transaction execution facility” for “designation as a contract market” in first sentence.

Subsec. (a)(9). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(2)(E)], adjusted margins.

Subsec. (c). Pub. L. 106-554, §1(a)(5) [title I, §102], added subsec. (c).

Subsec. (d). Pub. L. 106-554, §1(a)(5) [title I, §103], added subsec. (d).

Subsec. (e). Pub. L. 106-554, §1(a)(5) [title I, §104], added subsec. (e).

Subsec. (f). Pub. L. 106-554, §1(a)(5) [title I, §105(a)], added subsec. (f).

Subsec. (g). Pub. L. 106-554, §1(a)(5) [title I, §105(b)], added subsec. (g).

Subsec. (h). Pub. L. 106-554, §1(a)(5) [title I, §106], added subsec. (h).

Subsec. (i). Pub. L. 106-554, §1(a)(5) [title I, §107], added subsec. (i).

1992—Subsec. (a)(1)(A). Pub. L. 102-546, §404(b)(2)–(7), redesignated cls. (i) and (ii) of former third sentence as subcls. (I) and (II), respectively, designated former fifth sentence as cl. (ii), designated former eighth sentence as cl. (iii), and struck out former sixth, seventh, and ninth through last sentences, which included definitions of “future delivery”, “board of trade”, “interstate commerce”, “cooperative association of producers”, “member of a contract market”, “futures commission merchant”, “introducing broker”, “floor broker”, “the Commission”, “commodity trading advisor”, and “commodity pool operator”. See section 1a of this title.

Pub. L. 102-546, §404(b)(1), which directed the substitution of “(i) The Commission” for the words “For the purposes” and all that followed through “; *Provided*, That the Commission”, was executed by making the substitution for the first and second sentences and the third sentence through the words “: *Provided*, That the Commission”, to reflect the probable intent of Congress. Prior to amendment, the first, second, and third sentences included definitions of “contract of sale”, “person”, and “commodity”. See section 1a of this title.

Subsec. (a)(1)(B)(iv)(I). Pub. L. 102-546, §209(b)(1)(A), made technical amendment to reference to section 9 of this title appearing in penultimate sentence to reflect change in reference to corresponding section of original act.

Subsec. (a)(1)(B)(iv)(II). Pub. L. 102-546, §209(b)(1)(B), substituted “section 8(b)” for “section 8”.

Subsec. (a)(1)(B)(vi). Pub. L. 102-546, §501, added cl. (vi).

Subsec. (a)(2)(A). Pub. L. 102-546, §215, substituted second and third sentences for “The Commission shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. In nominating persons for appointment, the President shall seek to establish and maintain a balanced Commission, including, but not limited to, persons of demonstrated knowledge in futures trading or its regulation and persons of demonstrated knowledge in the production, merchandising, processing or distribution of one or more of the commodities or other goods and articles, services, rights and interests covered by this chapter.”

Subsec. (a)(9)(C). Pub. L. 102-546, §226, added subpar. (C).

1986—Subsec. (a)(1)(B)(iv)(I). Pub. L. 99-641 substituted “Securities and Exchange Commission” for

"Securities Exchange Commission" before "otherwise agree".

1983—Subsec. (a)(1). Pub. L. 97-444, §101, designated existing provisions as subpar. (A), inserted in third sentence, first proviso, ", except to the extent otherwise provided in subparagraph (B) of this paragraph," after "exclusive jurisdiction", and added subpar. (B).

Subsec. (a)(1)(A). Pub. L. 97-444, §201, inserted definition of "introducing broker" and, in revising definition of "commodity training advisor", included any person advising others through electronic media; substituted provision respecting advising others "as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market, any commodity option authorized under section 6c of this title, or any leverage transaction authorized under section 23 of this title, or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing" for provision respecting advising others "as to the value of commodities or as to the advisability of trading in any commodity for future delivery on or subject to the rules of any market, or who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning commodities"; excluded in item (i) any person acting as an employee of any bank or trust company; substituted in cl. (ii) "news reporter, news columnist, or news editor of the print or electronic media" for "newspaper reporter, newspaper columnist, newspaper editor"; substituted in cl. (iv) "the publisher or producer of any print or electronic data of general and regular dissemination, including its employees" for "the publisher of any bona fide newspaper magazine, or business or financial publication of general and regular circulation including their employees"; inserted item (v); redesignated as items (vi) and (vii) former items (v) and (vi); and authorized Commission to effectuate purposes of definition by rule or regulation by including within definition any person advising as to the value of commodities or issuing reports or analyses concerning commodities.

Subsec. (a)(7). Pub. L. 97-444, §202, struck out "(A)" after "(7)" and struck out subpar. (B) which prohibited any representative activities before the Commission for a one year period upon termination of employment occurring on a day more than four months after Sept. 30, 1978, of any Commissioner or employee of the Commission having a GS-16 or higher classified position excepted from the competitive service because of its confidential or policymaking character.

1978—Subsec. (a)(1). Pub. L. 95-405, §2(1), substituted "section 23 of this title" for "section 15a of this title".

Subsec. (a)(2). Pub. L. 95-405, §2(2)-(5), designated existing provisions as subpar. (A) and substituted "five Commissioners" for "a chairman and four other Commissioners", "(i)" for "(A)", and "(ii)" for "(B)", and added subpar. (B).

Subsec. (a)(5). Pub. L. 95-405, §2(6), struck out ", by and with the advice and consent of the Senate," after "by the Commission".

Subsec. (a)(6)(A). Pub. L. 95-405, §2(7), inserted "according to budget categories, plans, programs, and priorities established and approved by the Commission," after "expenditure of funds,".

Subsec. (a)(6)(B). Pub. L. 95-405, §2(8), substituted ", plans, priorities, and budgets approved by the Commission" for "of the Commission".

Subsec. (a)(7). Pub. L. 95-405, §2(9), (10), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(8). Pub. L. 95-405, §2(11)-(13), designated existing provisions as subpar. (A), substituted "maintain" for "establish a separate office within the Department of Agriculture to be staffed with employees of the Commission for the purpose of maintaining", and added subpar. (B).

Subsec. (a)(9)(A), (B). Pub. L. 95-405, §2(14), (15), substituted "Senate Committee on Agriculture, Nutrition, and Forestry" for "Senate Committee on Agriculture and Forestry".

1974—Subsec. (a). Pub. L. 93-463, §101(a), designated existing provisions as par. (1), substituted "Commodity Futures Trading Commission established under paragraph (2) of this subsection" for "Commodity Exchange Commission, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, or an official or employee of each of the executive departments concerned, designated by the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General, respectively; and the Secretary of Agriculture or his designee shall serve as Chairman", and added pars. (2) to (11).

Subsec. (a)(1). Pub. L. 93-463, §§201, 202, struck out "onions," after "eggs," in definition of "commodity" and inserted provisions to that definition to include as commodities all other goods and articles, except onions as provided in section 13-1 of this title, and all services, rights, and interests in which contracts for the future delivery are presently or in the future dealt in, and inserted definitions for "commodity trading advisor" and "commodity pool operator".

1968—Subsec. (a). Pub. L. 90-418 extended definition of "commodity" in third sentence to include frozen concentrated orange juice.

Pub. L. 90-258, §1(c), provided in last sentence for representation on the Commission of Secretary of Agriculture, Secretary of Commerce, and Attorney General by an official or employee designated from executive department concerned and for service of Secretary of Agriculture or his designee as Chairman.

Pub. L. 90-258, §1(b), substituted in definition of "floor broker" in penultimate sentence "purchase or sell for any other person" for "engage in executing for others any order for the purchase or sale of" and struck out provision for receipt or acceptance of any commission or other compensation for services as a floor broker.

Pub. L. 90-258, §1(a), extended definition of "commodity" in third sentence to include livestock and livestock products.

1955—Subsec. (a). Act July 26, 1955, extended "commodity" to onions.

1954—Subsec. (a). Act Aug. 28, 1954, extended "commodity" to wool.

1940—Subsec. (a). Act Oct. 9, 1940, extended "commodity" to fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans and soybean meal.

1938—Subsec. (a). Act Apr. 7, 1938, extended "commodity" to wool tops.

1936—Subsec. (a). Act June 15, 1936, substituted "commodity", "any commodity", or "commodities", as the case may require, for "grain" wherever appearing, and "any cash commodity" for "cash grain", substituted sentence defining "commodity" for sentence defining "grain", and inserted definitions of "cooperative association of producers", "member of a contract market", "futures commission merchant", "floor broker", and "the commission."

Subsec. (b). Act June 15, 1936, §2, substituted "commodity" and "commodities", as the case may require, for "grain" wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 239 of Pub. L. 97-444 provided that: "This Act [see Short Title of 1983 Amendment note set out under section 1 of this title] shall be effective upon the date of enactment of this Act [Jan. 11, 1983], except that sections 207, 212, and 231 of this Act [amending sections 6d, 6k, and 18 of this title] shall be effective one hundred and twenty days after the date of enactment of this Act, or such earlier date as the Commodity Futures Trading Commission shall prescribe by regulation."

EFFECTIVE DATE OF 1978 AMENDMENT

Section 28 of Pub. L. 95-405 provided that: "Except as otherwise provided in this Act, the provisions of this Act [see Short Title of 1978 Amendment note set out

under section 1 of this title] shall become effective October 1, 1978.”

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-463, title IV, §418, Oct. 23, 1974, 88 Stat. 1415, provided that:

“(a) Except as otherwise provided specifically in this Act [see Short Title of 1974 Amendment note set out under section 1 of this title], the effective date of this Act shall be the 180th day after enactment [Oct. 23, 1974]. The Commission referred to in section 101 [Commodity Futures Trading Commission] is hereby established effective immediately on enactment of this Act. Sections 102 and 410 [amending sections 5108, 5314, 5315, and 5316 of Title 5, Government Organization and Employees] shall be effective immediately on enactment of this Act. Activities necessary to implement the changes effected by this Act may be carried out after the date of enactment and before as well as after the 180th day thereafter. Activities to be carried out after the date of enactment and before the 180th day thereafter may include, but are not limited to the following: Designation of boards of trade as contract markets, registration of futures commission merchants, floor brokers, and other persons required to be registered under the Act [this chapter], approval or modification of bylaws, rules, regulations, and resolutions of contract markets, and issuance of regulations, effective on or after the 180th day after enactment; appointment and compensation of the members of the Commission; hiring and compensation of staff; and conducting of investigations and hearings. Nothing in this Act shall limit the authority of the Secretary of Agriculture or the Commodity Exchange Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.], as amended, prior to the 180th day after enactment of this Act.

“(b) Funds appropriated for the administration of the Commodity Exchange Act, as amended [7 U.S.C. 1 et seq.], may be used to implement this Act immediately after the date of enactment of this Act [Oct. 23, 1974].”

EFFECTIVE DATE OF 1968 AMENDMENT

Section 28 of Pub. L. 90-258 provided that: “This Act [enacting sections 12b, 13b, 13c, and 17b, and amending this section and sections 6a, 6b, 6d, 6f, 6g, 6i, 7, 7a, 7b, 8, 9, 12, 12-1, 12a, 13, and 13a of this title] shall become effective one hundred and twenty days after enactment [Feb. 19, 1968].”

EFFECTIVE DATE OF 1955 AMENDMENT

Section 2 of act July 26, 1955, provided that: “This Act [amending this section] shall take effect sixty days after the date of its enactment [July 26, 1955].”

EFFECTIVE DATE OF 1954 AMENDMENT

Section 710(b) of act Aug. 28, 1954, which provided that the amendment of this section by act Aug. 28, 1954, was effective 60 days after Aug. 28, 1954, was repealed by Pub. L. 103-130, §3(a), Nov. 1, 1993, 107 Stat. 1369, eff. Dec. 31, 1995.

EFFECTIVE DATE OF 1940 AMENDMENT

Section 2 of act Oct. 9, 1940, provided that: “This Act [amending this section] shall take effect sixty days after the date of its enactment [Oct. 9, 1940].”

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

SEPARABILITY OF 1974 AMENDMENT

Pub. L. 93-463, title IV, §413, Oct. 23, 1974, 88 Stat. 1414, provided that: “If any provision of this Act [see Short Title of 1974 Amendment note set out under section 1 of this title] or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the application of such

provisions to other persons or circumstances shall not be affected thereby.”

STUDY REGARDING RETAIL SWAPS

Pub. L. 106-554, §1(a)(5) [title I, §105(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-379, provided that:

“(1) IN GENERAL.—The Board of Governors of the Federal Reserve System, the Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall conduct a study of issues involving the offering of swap agreements to persons other than eligible contract participants (as defined in section 1a of the Commodity Exchange Act [7 U.S.C. 1a]).

“(2) MATTERS TO BE ADDRESSED.—The study shall address—

“(A) the potential uses of swap agreements by persons other than eligible contract participants;

“(B) the extent to which financial institutions are willing to offer swap agreements to persons other than eligible contract participants;

“(C) the appropriate regulatory structure to address customer protection issues that may arise in connection with the offer of swap agreements to persons other than eligible contract participants; and

“(D) such other relevant matters deemed necessary or appropriate to address.

“(3) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act [Dec. 21, 2000], a report on the findings and conclusions of the study required by paragraph (1) shall be submitted to Congress, together with such recommendations for legislative action as are deemed necessary and appropriate.”

EDUCATIONAL EVENTS AND SYMPOSIA

Pub. L. 106-78, title VI, Oct. 22, 1999, 113 Stat. 1160, provided in part: “That for fiscal year 2000 and thereafter, the Commission [Commodity Futures Trading Commission] is authorized to charge reasonable fees to attendees of Commission sponsored educational events and symposia to cover the Commission’s costs of providing those events and symposia, and notwithstanding 31 U.S.C. 3302, said fees shall be credited to this account, to be available without further appropriation.”

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 105-277, div. A, §101(a) [title VI], Oct. 21, 1998, 112 Stat. 2681, 2681-24.

Pub. L. 105-86, title VI, Nov. 18, 1997, 111 Stat. 2104.

Pub. L. 104-180, title VI, Aug. 6, 1996, 110 Stat. 1596.

Pub. L. 104-37, title VI, Oct. 21, 1995, 109 Stat. 327.

Pub. L. 103-330, title VI, Sept. 30, 1994, 108 Stat. 2466.

NON-ABATEMENT OF PENDING PROCEEDINGS

Pub. L. 93-463, title IV, §412, Oct. 23, 1974, 88 Stat. 1414, provided that: “Pending proceedings under existing law shall not be abated by reason of any provision of this Act [see Short Title of 1974 Amendment note set out under section 1 of this title] but shall be disposed of pursuant to the applicable provisions of the Commodity Exchange Act, as amended [7 U.S.C. 1 et seq.], in effect prior to the effective date of this Act [see Effective Date of 1974 Amendment note above].”

§§ 2a to 4a. Transferred

CODIFICATION

Section 2a, act Sept. 21, 1922, ch. 369, §2(a)(1)(C), formerly §2(a)(1)(B), as added Pub. L. 97-444, title I, §101(a)(3), Jan. 11, 1983, 96 Stat. 2294, and amended and renumbered, which related to designation of boards of trade as contract markets and approval by and jurisdiction of Commodity Futures Trading Commission and Securities and Exchange Commission, was transferred to section 2(a)(1)(C) of this title.

Section 3, act Sept. 21, 1922, ch. 369, §2(b), 42 Stat. 998, as amended, which related to transactions in interstate commerce, was transferred to section 2(b) of this title.

Section 4, act Sept. 21, 1922, ch. 369, §2(a)(1)(B), formerly §2(a), 42 Stat. 998, as amended and renumbered, which related to liability of principal for act of agent, was transferred to section 2(a)(1)(B) of this title.

Section 4a, act Sept. 21, 1922, ch. 369, §2(a)(2)–(11), as added Pub. L. 93-463, title I, §101(a)(3), Oct. 23, 1974, 88 Stat. 1389, and amended, which related to the Commodity Futures Trading Commission, was transferred to section 2(a)(2) to (11) of this title.

§ 5. Findings and purpose

(a) Findings

The transactions subject to this chapter are entered into regularly in interstate and international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.

(b) Purpose

It is the purpose of this chapter to serve the public interests described in subsection (a) of this section through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this chapter to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this chapter and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.

(Sept. 21, 1922, ch. 369, §3, as added Pub. L. 106-554, §1(a)(5) [title I, §108], Dec. 21, 2000, 114 Stat. 2763, 2763A-383.)

PRIOR PROVISIONS

A prior section 5, acts Sept. 21, 1922, ch. 369, §3, 42 Stat. 999; June 15, 1936, ch. 545, §2, 49 Stat. 1491; Pub. L. 97-444, title II, §203, Jan. 11, 1983, 96 Stat. 2298, stated legislative findings, prior to repeal by Pub. L. 106-554, §1(a)(5) [title I, §108], Dec. 21, 2000, 114 Stat. 2763, 2763A-383.

§ 6. Regulation of futures trading and foreign transactions

(a) Restriction on futures trading

Unless exempted by the Commission pursuant to subsection (c) of this section, it shall be unlawful for any person to offer to enter into, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a contract for the purchase or sale of a commodity for future delivery (other than a contract which is made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions) unless—

(1) such transaction is conducted on or subject to the rules of a board of trade which has been designated or registered by the Commis-

sion as a contract market or derivatives transaction execution facility for such commodity;

(2) such contract is executed or consummated by or through a contract market; and

(3) such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided*, That each contract market or derivatives transaction execution facility member shall keep such record for a period of three years from the date thereof, or for a longer period if the Commission shall so direct, which record shall at all times be open to the inspection of any representative of the Commission or the Department of Justice.

(b) Regulation of foreign transactions by United States persons

The Commission may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of reports, the keeping of books and records, the safeguarding of customers' funds, and registration with the Commission by any person located in the United States, its territories or possessions, who engages in the offer or sale of any contract of sale of a commodity for future delivery that is made or to be made on or subject to the rules of a board of trade, exchange, or market located outside the United States, its territories or possessions. Such rules and regulations may impose different requirements for such persons depending upon the particular foreign board of trade, exchange, or market involved. No rule or regulation may be adopted by the Commission under this subsection that (1) requires Commission approval of any contract, rule, regulation, or action of any foreign board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, or (2) governs in any way any rule or contract term or action of any foreign board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market.

(c) Public interest exemptions

(1) In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter (except subparagraphs (C)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by

rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest.

(2) The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) of this section unless the Commission determines that—

(A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this chapter; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this chapter.

(3) For purposes of this subsection, the term “appropriate person” shall be limited to the following persons or classes thereof:

(A) A bank or trust company (acting in an individual or fiduciary capacity).

(B) A savings association.

(C) An insurance company.

(D) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

(E) A commodity pool formed or operated by a person subject to regulation under this chapter.

(F) A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding \$1,000,000 or total assets exceeding \$5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph.

(G) An employee benefit plan with assets exceeding \$1,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], or a commodity trading advisor subject to regulation under this chapter.

(H) Any governmental entity (including the United States, any state,¹ or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing.

(I) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another appropriate person.

(J) A futures commission merchant, floor broker, or floor trader subject to regulation under this chapter acting on its own behalf or on behalf of another appropriate person.

(K) Such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.

(4) During the pendency of an application for an order granting an exemption under paragraph (1), the Commission may limit the public availability of any information received from the applicant if the applicant submits a written request to limit disclosure contemporaneous with the application, and the Commission determines that—

(A) the information sought to be restricted constitutes a trade secret; or

(B) public disclosure of the information would result in material competitive harm to the applicant.

(5) The Commission may—

(A) promptly following October 28, 1992, or upon application by any person, exercise the exemptive authority granted under paragraph (1) with respect to classes of hybrid instruments that are predominantly securities or depository instruments, to the extent that such instruments may be regarded as subject to the provisions of this chapter; or

(B) promptly following October 28, 1992, or upon application by any person, exercise the exemptive authority granted under paragraph (1) effective as of October 23, 1974, with respect to classes of swap agreements (as defined in section 101 of title 11) that are not part of a fungible class of agreements that are standardized as to their material economic terms, to the extent that such agreements may be regarded as subject to the provisions of this chapter.

Any exemption pursuant to this paragraph shall be subject to such terms and conditions as the Commission shall determine to be appropriate pursuant to paragraph (1).

(d) Effect of exemption on investigative authority of Commission

The granting of an exemption under this section shall not affect the authority of the Commission under any other provision of this chapter to conduct investigations in order to determine compliance with the requirements or conditions of such exemption or to take enforcement action for any violation of any provision of this chapter or any rule, regulation or order thereunder caused by the failure to comply with or satisfy such conditions or requirements.

(Sept. 21, 1922, ch. 369, §4, 42 Stat. 999; June 15, 1936, ch. 545, §§2, 4, 49 Stat. 1491, 1492; Pub. L. 93–463, title I, §103(a), (f), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 97–444, title II, §204, Jan. 11, 1983, 96 Stat. 2299; Pub. L. 102–546, title V, §502(a), Oct. 28, 1992, 106 Stat. 3629; Pub. L. 106–554, §1(a)(5) [title I, §123(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–406.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (c)(3)(D), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a–51 of Title 15 and Tables.

¹ So in original. Probably should be capitalized.

The Investment Advisers Act of 1940, referred to in subsec. (c)(3)(G), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§80b-1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80b-20 of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (c)(3)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(3)(A)(i)], substituted “designated or registered by the Commission as a contract market or derivatives transaction execution facility for” for “designated by the Commission as a ‘contract market’ for”.

Subsec. (a)(2). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(3)(A)(ii)], struck out “member of such” after “by or through a”.

Subsec. (a)(3). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(3)(A)(iii)], inserted “or derivatives transaction execution facility” after “contract market”.

Subsec. (c)(1). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(3)(B)(i)], substituted “designated or registered as a contract market or derivatives transaction execution facility” for “designated as a contract market” and “subparagraphs (C)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title” for “section 2a of this title”.

Subsec. (c)(2)(B)(ii). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(3)(B)(ii)], inserted “or derivatives transaction execution facility” after “contract market”.

1992—Subsec. (a). Pub. L. 102-546, §502(a)(1), substituted “Unless exempted by the Commission pursuant to subsection (c) of this section, it shall be unlawful” for “It shall be unlawful”.

Subsecs. (c), (d). Pub. L. 102-546, §502(a)(2), added subsecs. (c) and (d).

1983—Pub. L. 97-444 amended section generally, combining into subsec. (a) existing provisions of this section together with provisions formerly contained in section 6h(1) of this title, relating to the conduct of offices or places of business anywhere in the United States or its territories that are used for dealing in commodities for future delivery unless such dealings are executed or consummated by or through a member of a contract market, and adding subsec. (b).

1974—Pub. L. 93-463 substituted “Commission” for “Secretary of Agriculture” and “United States Department of Agriculture”.

1936—Act June 15, 1936, §2, substituted “commodity” for “grain” wherever appearing.

Act June 15, 1936, §4, struck out par. (a) and combined par. (b) with first par.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

§ 6a. Excessive speculation

(a) Burden on interstate commerce; trading or position limits

Excessive speculation in any commodity under contracts of sale of such commodity for future

delivery made on or subject to the rules of contract markets or derivatives transaction execution facilities causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time, after due notice and opportunity for hearing, by rule, regulation, or order, proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility as the Commission finds are necessary to diminish, eliminate, or prevent such burden. In determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person. Nothing in this section shall be construed to prohibit the Commission from fixing different trading or position limits for different commodities, markets, futures, or delivery months, or for different number of days remaining until the last day of trading in a contract, or different trading limits for buying and selling operations, or different limits for the purposes of paragraphs (1) and (2) of subsection (b) of this section, or from exempting transactions normally known to the trade as “spreads” or “straddles” or “arbitrage” or from fixing limits applying to such transactions or positions different from limits fixed for other transactions or positions. The word “arbitrage” in domestic markets shall be defined to mean the same as “spread” or “straddle”. The Commission is authorized to define the term “international arbitrage”.

(b) Prohibition on trading or positions in excess of limits fixed by Commission

The Commission shall, in such rule, regulation, or order, fix a reasonable time (not to exceed ten days) after the promulgation of the rule, regulation, or order; after which, and until such rule, regulation, or order is suspended, modified, or revoked, it shall be unlawful for any person—

(1) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or markets, or derivatives transaction execution facility or facilities, to which the rule, regulation, or order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the Commission in such rule, regulation, or order for or with respect to such commodity; or

(2) directly or indirectly to hold or control a net long or a net short position in any com-

commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility in excess of any position limit fixed by the Commission for or with respect to such commodity: *Provided*, That such position limit shall not apply to a position acquired in good faith prior to the effective date of such rule, regulation, or order.

(c) Applicability to bona fide hedging transactions or positions

No rule, regulation, or order issued under subsection (a) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission by rule, regulation, or order consistent with the purposes of this chapter. Such terms may be defined to permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange. To determine the adequacy of this chapter and the powers of the Commission acting thereunder to prevent unwarranted price pressures by large hedgers, the Commission shall monitor and analyze the trading activities of the largest hedgers, as determined by the Commission, operating in the cattle, hog, or pork belly markets and shall report its findings and recommendations to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture in its annual reports for at least two years following January 11, 1983.

(d) Persons subject to regulation; applicability to transactions made by or on behalf of United States

This section shall apply to a person that is registered as a futures commission merchant, an introducing broker, or a floor broker under authority of this chapter only to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. This section shall not apply to transactions made by, or on behalf of, or at the direction of, the United States, or a duly authorized agency thereof.

(e) Rulemaking power and penalties for violation

Nothing in this section shall prohibit or impair the adoption by any contract market, derivatives transaction execution facility, or by any other board of trade licensed, designated, or registered by the Commission of any bylaw, rule, regulation, or resolution fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery traded on or subject to the rules of such contract market or derivatives transaction execution facility, or under options on such contracts or commodities traded on or subject to the rules of such contract market, derivatives transaction execution facility, or such board of trade: *Provided*, That if the Commission shall have fixed limits under this section for any contract or under section 6c of this title for any commodity option, then the limits fixed by the

bylaws, rules, regulations, and resolutions adopted by such contract market, derivatives transaction execution facility, or such board of trade shall not be higher than the limits fixed by the Commission. It shall be a violation of this chapter for any person to violate any bylaw, rule, regulation, or resolution of any contract market, derivatives transaction execution facility, or other board of trade licensed, designated, or registered by the Commission fixing limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of any commodity for future delivery or under options on such contracts or commodities, if such bylaw, rule, regulation, or resolution has been approved by the Commission: *Provided*, That the provisions of section 13(c)¹ of this title shall apply only to those who knowingly violate such limits.

(Sept. 21, 1922, ch. 369, §4a, as added June 15, 1936, ch. 545, §5, 49 Stat. 1492; amended July 24, 1956, ch. 690, §1, 70 Stat. 630; Pub. L. 90-258, §§2-4, Feb. 19, 1968, 82 Stat. 26, 27; Pub. L. 93-463, title IV, §§403, 404, Oct. 23, 1974, 88 Stat. 1413; Pub. L. 94-16, §4, Apr. 16, 1975, 89 Stat. 78; Pub. L. 97-444, title II, §205, Jan. 11, 1983, 96 Stat. 2299; Pub. L. 102-546, title IV, §402(1)(A), (2), Oct. 28, 1992, 106 Stat. 3624; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(4)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407.)

REFERENCES IN TEXT

Section 13(c) of this title, referred to in subsec. (e), was struck out and subsec. (d) of section 13 was redesignated (c) by Pub. L. 102-546, title II, §212(a)(1)(A), (B), Oct. 28, 1992, 106 Stat. 3608.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(4)(A)], inserted “or derivatives transaction execution facilities” after “contract markets” in first sentence and “or derivatives transaction execution facility” after “contract market” in second sentence.

Subsec. (b)(1). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(4)(B)(i)], inserted “, or derivatives transaction execution facility or facilities,” after “markets”.

Subsec. (b)(2). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(4)(B)(ii)], inserted “or derivatives transaction execution facility” after “contract market”.

Subsec. (e). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(4)(C)], substituted “contract market, derivatives transaction execution facility, or” for “contract market or” wherever appearing, “licensed, designated, or registered” for “licensed or designated” in two places, and “contract market or derivatives transaction execution facility, or” for “contract market, or”.

1992—Subsec. (a). Pub. L. 102-546, §402(1)(A), (2)(A), (C), redesignated par. (1) as subsec. (a), substituted “Commission” for “commission” wherever appearing except in last sentence, and substituted “paragraphs (1) and (2) of subsection (b) of this section” for “subparagraphs (A) and (B) of paragraph (2)”.

Subsec. (b). Pub. L. 102-546, §402(1)(A), (2)(C), (D), redesignated par. (2) as subsec. (b) and subpars. (A) and (B) as pars. (1) and (2), respectively, and substituted “Commission” for “commission” wherever appearing.

Subsec. (c). Pub. L. 102-546, §402(2)(B), (C), redesignated par. (3) as subsec. (c) and substituted “subsection (a)” for “paragraph (1)”.

Subsecs. (d), (e). Pub. L. 102-546, §402(2)(C), redesignated pars. (4) and (5) as subsecs. (d) and (e), respectively.

1983—Par. (1). Pub. L. 97-444, §205(1), (2), substituted “by rule, regulation, or order, proclaim” for “by order,

¹ See References in Text note below.

proclaim" and inserted "or for different number of days remaining until the last day of trading in a contract," after "delivery months".

Par. (2). Pub. L. 97-444, § 205(1), (3), substituted "after the promulgation of the rule, regulation, or order" for "after the order's promulgation" in provisions before subpar. (A) and substituted "rule, regulation, or order" for "order" in provisions before subpar. (A) and in subpars. (A) and (B).

Par. (3). Pub. L. 97-444, § 205(4), substituted "No rule, regulation, or order issued under paragraph (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission by rule, regulation, or order consistent with the purposes of this chapter" for "No order issued under paragraph (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission within one hundred and eighty days after the effective date of the Commodity Futures Trading Commission Act of 1974 by order consistent with the purposes of this chapter" and inserted "Such terms may be defined to permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange. To determine the adequacy of this chapter and the powers of the Commission acting thereunder to prevent unwarranted price pressures by large hedgers, the Commission shall monitor and analyze the trading activities of the largest hedgers, as determined by the Commission, operating in the cattle, hog, or pork belly markets and shall report its findings and recommendations to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture in its annual reports for at least two years following January 11, 1983."

Par. (4). Pub. L. 97-444, § 205(5), substituted "a futures commission merchant, an introducing broker, or a floor broker" for "a futures commission merchant or as floor broker".

Par. (5). Pub. L. 97-444, § 205(6), added par. (5).

1975—Par. (3). Pub. L. 94-16 substituted "one hundred and eighty days" for "ninety days".

1974—Par. (1). Pub. L. 93-463, § 403, inserted "or 'arbitrage'" after "or 'straddles'", inserted definition of "arbitrage", and authorized Commission to define "international arbitrage".

Par. (3). Pub. L. 93-463, § 404, directed Commission to define "bona fide hedging transactions or positions" within 90 days after the effective date of the Commodity Futures Trading Commission Act of 1974 and struck out provisions which enumerated the factors to be taken into account in determining whether a hedging transaction or position was a bona fide transaction or position.

1968—Par. (1). Pub. L. 90-258, § 2, substituted in second sentence "amounts of trading" for "amount of trading", inserted "which may be done or positions which may be held by any person" before "under contracts of sale", and struck out "which may be done" after "rules of any contract market", inserted third sentence providing for inclusion of controlled positions and trading in determining whether prescribed position or trading limits have been exceeded and for application of such position and trading limits to activities of two or more persons acting pursuant to agreement or understanding as if the activities of a single person, and included in fourth, formerly third, sentence references to position limits and to positions, substituted "normally" for "commonly", and struck out "trading" from "from fixing trading limits" and "from trading limits".

Par. (2)(B). Pub. L. 90-258, § 3, substituted prohibition against holding of net long or net short positions in excess of any position limit fixed by the Commission for former prohibition of purchases or sales which result in net long or net short positions in excess of trading limits fixed by the Commission and provided that the posi-

tion limit shall not apply to a position acquired in good faith prior to the effective date of the order.

Par. (3). Pub. L. 90-258, § 4, included references to positions, made hedging applicable to short and long positions, substituted "contract market" for "board of trade", and required the activities to be those of the same person to constitute hedging.

1956—Par. (3)(C). Act July 24, 1956, added subpar. (C).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 404 of Pub. L. 93-463 provided that the amendment of par. (3) which struck out provisions that enumerated the factors to be taken into account in determining whether a hedging transaction or position was a bona fide transaction or position, was effective immediately upon the enactment of Pub. L. 93-463, which was approved Oct. 23, 1974.

Amendment by Pub. L. 93-463 of par. (1) and that part of par. (3) directing the Commission to define "bona fide hedging transactions or positions" effective so as to allow implementation of all changes effected by this amendment to be carried out after Oct. 23, 1974, and before as well as after the 180th day thereafter, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 2 of act July 24, 1956, provided that: "This Act [amending this section] shall take effect sixty days after the date of its enactment [July 24, 1956]."

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

REGULATIONS DEFINING BONA FIDE HEDGING TRANSACTIONS AND POSITIONS

Section 404 of Pub. L. 93-463 provided in part: "That notwithstanding any other provision of law, the Secretary of Agriculture, immediately upon the enactment of the Commodity Futures Trading Commission Act of 1974 [which was approved on Oct. 23, 1974], is authorized and directed to promulgate regulations defining bona fide hedging transactions and positions: *And provided further*, That until the Secretary issues such regulations defining bona fide hedging transactions and positions and such regulations are in full force and effect, such terms shall continue to be defined as set forth in the Commodity Exchange Act [par. (3) of this section] prior to its amendment by the Commodity Futures Trading Commission Act of 1974 [Pub. L. 93-463]."

§ 6b. Fraud, false reporting, or deception prohibited

(a) Contracts designed to defraud or mislead; bucketing orders

It shall be unlawful (1) for any member of a registered entity, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce, made, or to be made, on or subject to the rules of any registered entity, for or on behalf of any other person, or (2) for any person, in or in connection with any order to

make, or the making of, any contract of sale of any commodity for future delivery made, or to be made, for or on behalf of any other person if such contract for future delivery is or may be used for (A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (B) determining the price basis of any transaction in interstate commerce in such commodity, or (C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

(i) to cheat or defraud or attempt to cheat or defraud such other person;

(ii) willfully to make or cause to be made to such other person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;

(iii) willfully to deceive or attempt to deceive such other person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person; or

(iv) to bucket such order, or to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

(b) Buying and selling orders for commodity

Nothing in this section or in any other section of this chapter shall be construed to prevent a futures commission merchant or floor broker who shall have in hand, simultaneously, buying and selling orders at the market for different principals for a like quantity of a commodity for future delivery in the same month executing such buying and selling orders at the market price: *Provided*, That any such execution shall take place on the floor of the exchange where such orders are to be executed at public outcry across the ring and shall be duly reported, recorded, and cleared in the same manner as other orders executed on such exchange: *And provided further*, That such transactions shall be made in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

(c) Inapplicability to transactions on foreign exchanges

Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of a commodity for future delivery that is made, or to be made, on or subject to the rules of such board of trade, exchange, or market.

(Sept. 21, 1922, ch. 369, §4b, as added June 15, 1936, ch. 545, §5, 49 Stat. 1493; amended Pub. L. 90-258, §5, Feb. 19, 1968, 82 Stat. 27; Pub. L. 93-463, title IV, §405, Oct. 23, 1974, 88 Stat. 1413; Pub. L. 99-641, title I, §101, Nov. 10, 1986, 100 Stat. 3557; Pub. L. 102-546, title IV, §402(3), Oct.

28, 1992, 106 Stat. 3624; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407.)

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106-554 substituted “registered entity” for “contract market” in two places.

1992—Pub. L. 102-546 designated first par. as subsec. (a), redesignated cls. (a) to (c) as subpars. (A) to (C), respectively, and subpars. (A) to (D) as cls. (i) to (iv), respectively, and designated second and third undesignated pars. as subsecs. (b) and (c), respectively.

1986—Pub. L. 99-641 struck out “on or subject to the rules of any contract market,” after “to be made” in cl. (2) of first par. and added concluding paragraph that this section not apply to activity on board of trade, exchange, market, or clearinghouse located outside United States involving contract of sale of commodity for future delivery.

1974—Pub. L. 93-463 substituted “a commodity” for “cotton” in provisions following subpar. (D) and inserted requirement that execution of buying and selling orders for commodities held simultaneously by the same merchant or broker be carried out in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

1968—Pub. L. 90-258 relocated cl. (1) designation in first par. to follow “unlawful” rather than to precede “any contract of sale”, provided in such cl. (1) for orders to make or making of contracts of sale “made, or to be made on or subject to the rules of any contract market, for or on behalf of any other person” and in cl. (2) “for any person, in or in connection with any order to make, or the making of,” any contract of sale of any commodity for future delivery for or on behalf of any “other” person; and inserted “other” before “person” in subpar. (A) and in subpars. (B) and (C) where appearing for first time, respectively.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 6c. Prohibited transactions

(a) In general

(1) Prohibition

It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving the purchase or sale of any commodity for future delivery (or any option on such a transaction or option on a commodity) if the transaction is used or may be used to—

(A) hedge any transaction in interstate commerce in the commodity or the product or byproduct of the commodity;

(B) determine the price basis of any such transaction in interstate commerce in the commodity; or

(C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

(2) Transaction

A transaction referred to in paragraph (1) is a transaction that—

(A)(i) is, of the character of, or is commonly known to the trade as, a “wash sale” or “accommodation trade”; or

(ii) is a fictitious sale; or

(B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.

(b) Regulated option trading

No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”, contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. Any such order, rule, or regulation may be made only after notice and opportunity for hearing, and the Commission may set different terms and conditions for different markets.

(c) Regulations for elimination of pilot status of commodity option transactions; terms and conditions of options trading

Not later than 90 days after November 10, 1986, the Commission shall issue regulations—

(1) to eliminate the pilot status of its program for commodity option transactions involving the trading of options on contract markets, including any numerical restrictions on the number of commodities or option contracts for which a contract market may be designated; and

(2) otherwise to continue to permit the trading of such commodity options under such terms and conditions that the Commission from time to time may prescribe.

(d) Dealer options exempt from subsections (b) and (c) prohibitions; requirements

Notwithstanding the provisions of subsection (c) of this section—

(1) any person domiciled in the United States who on May 1, 1978, was in the business of granting an option on a physical commodity, other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, and was in the business of buying, selling, producing, or otherwise using that commodity, may continue to grant or issue options on that commodity in accordance with Commission regulations in effect on August 17, 1978, until thirty days after the effective date of regulations issued by the Commission under clause (2) of this subsection: *Provided*, That if such person files an application for registration under the regulations issued under clause (2) of this subsection within thirty days after the effective date of such regulations, that person may continue to grant or issue options pending a final determination by the Commission on the application; and

(2) the Commission shall issue regulations that permit grantors and futures commission merchants to offer to enter into, enter into, or confirm the execution of, any commodity option transaction on a physical commodity sub-

ject to the provisions of subsection (b) of this section, other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, if—

(A) the grantor is a person domiciled in the United States who—

(i) is in the business of buying, selling, producing, or otherwise using the underlying commodity;

(ii) at all times has a net worth of at least \$5,000,000 certified annually by an independent public accountant using generally accepted accounting principles;

(iii) notifies the Commission and every futures commission merchant offering the grantor's option if the grantor knows or has reason to believe that the grantor's net worth has fallen below \$5,000,000;

(iv) segregates daily, exclusively for the benefit of purchasers, money, exempted securities (within the meaning of section 78c(a)(12) of title 15), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction;

(v) provides an identification number for each transaction; and

(vi) provides confirmation of all orders for such transactions executed, including the execution price and a transaction identification number;

(B) the futures commission merchant is a person who—

(i) has evidence that the grantor meets the requirements specified in subclause (A) of this clause;

(ii) treats and deals with all money, securities, or property received from its customers as payment of the purchase price in connection with such transactions, as belonging to such customers until the expiration of the term of the option, or, if the customer exercises the option, until all rights of the customer under the commodity option transaction have been fulfilled;

(iii) records each transaction in its customer's name by the transaction identification number provided by the grantor;

(iv) provides a disclosure statement to its customers, under regulations of the Commission, that discloses, among other things, all costs, including any markups or commissions involved in such transaction; and

(C) the grantor and futures commission merchant comply with any additional uniform and reasonable terms and conditions the Commission may prescribe, including registration with the Commission.

The Commission may permit persons not domiciled in the United States to grant options under this subsection, other than options on a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, under such additional rules, regulations, and orders as the Commission may adopt to provide protection to purchasers that are substantially the equivalent

of those applicable to grantors domiciled in the United States. The Commission may terminate the right of any person to grant, offer, or sell options under this subsection only after a hearing, including a finding that the continuation of such right is contrary to the public interest: *Provided*, That pending the completion of such termination proceedings, the Commission may suspend the right to grant, offer, or sell options of any person whose activities in the Commission's judgment present a substantial risk to the public interest.

(e) Rules and regulations

The Commission may adopt rules and regulations, after public notice and opportunity for a hearing on the record, prohibiting the granting, issuance, or sale of options permitted under subsection (d) of this section if the Commission determines that such options are contrary to the public interest.

(f) Nonapplicability to foreign currency options

Nothing in this chapter shall be deemed to govern or in any way be applicable to any transaction in an option on foreign currency traded on a national securities exchange.

(g) Oral orders

The Commission shall adopt rules requiring that a contemporaneous written record be made, as practicable, of all orders for execution on the floor or subject to the rules of each contract market or derivatives transaction execution facility placed by a member of the contract market or derivatives transaction execution facility who is present on the floor at the time such order is placed.

(Sept. 21, 1922, ch. 369, § 4c, as added June 15, 1936, ch. 545, § 5, 49 Stat. 1494; amended Pub. L. 93-463, title I, § 103(a), title IV, § 402, Oct. 23, 1974, 88 Stat. 1392, 1412; Pub. L. 95-405, § 3, Sept. 30, 1978, 92 Stat. 867; Pub. L. 97-444, title I, § 102, title II, § 206, Jan. 11, 1983, 96 Stat. 2296, 2301; Pub. L. 99-641, title I, § 102, Nov. 10, 1986, 100 Stat. 3557; Pub. L. 102-546, title II, § 203(a), title IV, § 402(4), Oct. 28, 1992, 106 Stat. 3600, 3624; Pub. L. 106-554, § 1(a)(5) [title I, §§ 109, 123(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A-383, 2763A-407.)

AMENDMENTS

2000—Pub. L. 106-554, § 1(a)(5) [title I, § 109], inserted section catchline.

Subsec. (a). Pub. L. 106-554, § 1(a)(5) [title I, § 109], added subsec. (a) and struck out former subsec. (a) which read as follows: "It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity, which is or may be used for (1) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (2) determining the price basis of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

"(A) if such transaction is, is of the character of, or is commonly known to the trade as, a 'wash sale,' 'cross trade,' or 'accommodation trade,' or is a fictitious sale; or

"(B) if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

Nothing in this section shall be construed to prevent the exchange of futures in connection with cash com-

modity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such transactions and such rules shall have been approved by the Commission."

Subsec. (g). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(6)], inserted "or derivatives transaction execution facility" after "contract market" in two places.

1992—Subsec. (d)(2). Pub. L. 102-546, § 402(4), made technical amendments to references to section 78c(a)(12) of title 15 in subpar. (A)(iv) and to section 2(a) of this title in concluding provisions.

Subsec. (g). Pub. L. 102-546, § 203(a), added subsec. (g).

1986—Subsec. (c). Pub. L. 99-641, amended subsec. (c) generally, substituting provisions relating to regulations to eliminate pilot status of program for commodity option transactions for provisions relating to commodity option transactions, pilot program and permanent authorization, conditions ending prohibition, and excepted persons.

1983—Subsec. (a)(B), (C). Pub. L. 97-444, § 206(1), redesignated par. (C) as (B). Former par. (B), relating to transactions involving any commodity specifically set forth in section 2(a) of this title, prior to October 23, 1974, if such transactions were of the character of, or were commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", was struck out.

Subsec. (b). Pub. L. 97-444, § 206(2), in revising section generally, struck out references to any transaction subject to provisions of subsection (a) of this section and to any commodity not specifically set forth in section 2(a) of this title, prior to October 23, 1974, and struck out "within one year after the effective date of the Commodity Futures Trading Commission Act of 1974 unless the Commission determines and notifies the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture that it is unable to prescribe such terms and conditions within such period of time:" after "such terms and conditions as the Commission shall prescribe".

Subsec. (c). Pub. L. 97-444, § 206(3), inserted "With respect to any commodity regulated under this chapter and specifically set forth in section 2(a) of this title prior to October 23, 1974, the Commission may, pursuant to the procedures set forth in this subsection, establish a pilot program for a period not to exceed three years to permit such commodity option transactions. The Commission may authorize commodity option transactions during the pilot program in as many commodities as will provide an adequate test of the trading of such option transactions. After completion of the pilot program, the Commission may authorize commodity option transactions without regard to the restrictions in the pilot program after the Commission transmits to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry the documentation required under clause (1) of the first sentence of this subsection and the expiration of thirty calendar days of continuous session of Congress after the date of such transmittal."

Subsec. (d)(1). Pub. L. 97-444, § 206(4)(A), inserted " , other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974," after "physical commodity".

Subsec. (d)(2). Pub. L. 97-444, § 206(4)(B), inserted " , other than a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974," after "subsection (b) of this section" in provisions preceding subpar. (A).

Pub. L. 97-444, § 206(4)(C), inserted " , other than options on a commodity specifically set forth in section 2(a) of this title prior to October 23, 1974," after "The Commission may permit persons not domiciled in the United States to grant options under this subsection" in provisions following par. (2).

Subsec. (f). Pub. L. 97-444, § 102, added subsec. (f).

1978—Subsec. (a). Pub. L. 95-405, § 3(1), in provisions following par. (C) substituted "have been approved" for "not have been disapproved".

Subsec. (b). Pub. L. 95-405, §3(2), substituted "Senate Committee on Agriculture, Nutrition, and Forestry" for "Senate Committee on Agriculture and Forestry".

Subsecs. (c) to (e). Pub. L. 95-405, §3(3), added subsecs. (c) to (e).

1974—Subsec. (a). Pub. L. 93-463, §§103(a), 402(a), (b), (d), designated existing provisions as subsec. (a), in par. (B) of subsec. (a) as so designated inserted "if such transaction involves any commodity specifically set forth in section 2(a) of this title, prior to the enactment of the Commodity Futures Trading Commission Act of 1974, and" and "option", and in provisions following par. (C), struck out provisions prohibiting a construction of this section or section 6b of this title which would impair any State law applicable to any transaction enumerated or described in this section or section 6b of this title and substituted "Commission" for "Secretary of Agriculture".

Subsec. (b). Pub. L. 93-463, §402(c), added subsec. (b).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 203(b) of Pub. L. 102-546 provided that: "The Commission shall adopt the rules required by the amendment made under subsection (a) [amending this section] within two hundred and seventy days after the date of enactment of this Act [Oct. 28, 1992]."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 6d. Dealing by unregistered futures commission merchants or introducing brokers prohibited; duties in handling customer receipts; rules to avoid duplicative regulations

(a) Registration requirements; duties of merchants in handling customer receipts

It shall be unlawful for any person to engage as futures commission merchant or introducing broker in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or derivatives transaction execution facility unless—

(1) such person shall have registered, under this chapter, with the Commission as such futures commission merchant or introducing broker and such registration shall not have expired nor been suspended nor revoked; and

(2) such person shall, if a futures commission merchant, whether a member or nonmember of a contract market or derivatives transaction execution facility, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of

such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities, and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: *Provided, however*, That such money, securities, and property of the customers of such futures commission merchant may, for convenience, be commingled and deposited in the same account or accounts with any bank or trust company or with the clearing house organization of such contract market or derivatives transaction execution facility, and that such share thereof as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle the contracts or trades of such customers, or resulting market positions, with the clearinghouse organization of such contract market or derivatives transaction execution facility or with any member of such contract market or derivatives transaction execution facility, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with such contracts and trades: *Provided further*, That in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, such money, securities, and property of the customers of such futures commission merchant may be commingled and deposited as provided in this section with any other money, securities, and property received by such futures commission merchant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such futures commission merchant: *Provided further*, That such money may be invested in obligations of the United States, in general obligations of any State or of any political subdivision thereof, and in obligations fully guaranteed as to principal and interest by the United States, such investments to be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

(b) Duties of clearing agencies, depositories, and others in handling customer receipts

It shall be unlawful for any person, including but not limited to any clearing agency of a contract market or derivatives transaction execution facility and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section,¹ to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant.

¹ So in original. Probably means subsection (a)(2) of this section.

(c) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, the Commission, in consultation with the Securities and Exchange Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any futures commission merchant registered with the Commission pursuant to section 6f(a) of this title (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 78o(b) of title 15 (except paragraph (11) thereof), involving the application of—

(1) section 78h, section 78o(c)(3), and section 78q of title 15 and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting or other financial responsibility rules (as defined in section 78c(a)(40) of title 15), involving security futures products; and

(2) similar provisions of this chapter and the rules and regulations thereunder involving security futures products.

(Sept. 21, 1922, ch. 369, §4d, as added June 15, 1936, ch. 545, §5, 49 Stat. 1494; amended Pub. L. 90-258, §6, Feb. 19, 1968, 82 Stat. 27; Pub. L. 93-463, title I, §103(a), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95-405, §4, Sept. 30, 1978, 92 Stat. 869; Pub. L. 97-444, title II, §207, Jan. 11, 1983, 96 Stat. 2302; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(6), title II, §251(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407, 2763A-443.)

AMENDMENTS

2000—Pub. L. 106-554, §1(a)(5) [title II, §251(f)], designated first undesignated par. as subsec. (a), designated second undesignated par. as subsec. (b), and added subsec. (c).

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(6)], inserted “or derivatives transaction execution facility” after “contract market” wherever appearing.

1983—Pub. L. 97-444, §207(1), inserted reference to introducing brokers in provisions preceding par. (1).

Par. (1). Pub. L. 97-444, §207(2), inserted “or introducing broker” after “futures commission merchant”.

Par. (2). Pub. L. 97-444, §207(3), inserted “if a futures commission merchant,” after “such person shall,”.

1978—Pub. L. 95-405 in par. (2) inserted provisions authorizing Commission to prescribe terms and conditions under which funds and property commingled and deposited as permitted by par. (2) may be commingled and deposited with other funds and property received by a futures commission merchant and required by Commission to be separately accounted for and treated as belonging to its customers.

1974—Pub. L. 93-463 substituted “Commission” for “Secretary of Agriculture” in pars. (1) and (2).

1968—Pub. L. 90-258 struck out from second proviso of first par. authorization for investment of customer funds in investment securities of the kind national banking associations may buy or in loans secured by negotiable warehouse receipts conveying or securing title to readily marketable commodities to the extent of the current loan value of such receipts and added second par., making it unlawful for any person, including a clearing agency of a contract market or any depository, to treat customer funds as belonging to any person other than the customer, respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective 120 days after Jan. 11, 1983, or such earlier date as the Commission

shall prescribe by regulation, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§6e. Dealings by unregistered floor trader or broker prohibited

It shall be unlawful for any person to act as floor trader in executing purchases and sales, or as floor broker in executing any orders for the purchase or sale, of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or derivatives transaction execution facility unless such person shall have registered, under this chapter, with the Commission as such floor trader or floor broker and such registration shall not have expired nor been suspended nor revoked.

(Sept. 21, 1922, ch. 369, §4e, as added June 15, 1936, ch. 545, §5, 49 Stat. 1495; amended Pub. L. 93-463, title I, §103(a), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 102-546, title II, §207(a), Oct. 28, 1992, 106 Stat. 3604; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407.)

AMENDMENTS

2000—Pub. L. 106-554 inserted “or derivatives transaction execution facility” after “contract market”.

1992—Pub. L. 102-546 amended section generally. Prior to amendment, section read as follows: “It shall be unlawful for any person to act as floor broker in executing any orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless such person shall have registered, under this chapter, with the Commission as such floor broker and such registration shall not have expired nor been suspended nor revoked.”

1974—Pub. L. 93-463 substituted “Commission” for “Secretary of Agriculture”.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 207(c) of Pub. L. 102-546 provided that: “The amendments made by this section [amending this section and sections 6f, 6g, 12a, and 13a-2 of this title] shall become effective one hundred and eighty days after the date of enactment of this Act [Oct. 28, 1992], and the Commodity Futures Trading Commission shall issue any regulations necessary to implement the amendments made by this section no later than one hundred and eighty days after the date of enactment of this Act.”

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 6f. Registration and financial requirements; risk assessment

(a) Registration of futures commission merchants, introducing brokers, and floor brokers and traders

(1) Any person desiring to register as a futures commission merchant, introducing broker, floor broker, or floor trader hereunder shall be registered upon application to the Commission. The application shall be made in such form and manner as prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the business in which the applicant is or will be engaged, including in the case of an application of a futures commission merchant or an introducing broker, the names and addresses of the managers of all branch offices, and the names of such officers and partners, if a partnership, and of such officers, directors, and stockholders, if a corporation, as the Commission may direct. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission the above-mentioned information and such other information pertaining to such person's business as the Commission may require. Each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor unless the registration has been suspended (and the period of such suspension has not expired) or revoked pursuant to the provisions of this chapter.

(2) Notwithstanding paragraph (1), and except as provided in paragraph (3), any broker or dealer that is registered with the Securities and Exchange Commission shall be registered as a futures commission merchant or introducing broker, as applicable, if—

(A) the broker or dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products;

(B) the broker or dealer files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors;

(C) the registration of the broker or dealer is not suspended pursuant to an order of the Securities and Exchange Commission; and

(D) the broker or dealer is a member of a national securities association registered pursuant to section 780-3(a) of title 15.

The registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission.

(3) A floor broker or floor trader shall be exempt from the registration requirements of section 6e of this title and paragraph (1) of this subsection if—

(A) the floor broker or floor trader is a broker or dealer registered with the Securities and Exchange Commission;

(B) the floor broker or floor trader limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market to security futures products; and

(C) the registration of the floor broker or floor trader is not suspended pursuant to an order of the Securities and Exchange Commission.

(4)(A) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2), or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall be exempt from the following provisions of this chapter and the rules thereunder:

(i) Subsections (b), (d), (e), and (g) of section 6c of this title.

(ii) Sections 6d, 6e, and 6h of this title.

(iii) Subsections (b) and (c) of this section.

(iv) Section 6j of this title.

(v) Section 6k(1) of this title.

(vi) Section 6p¹ of this title.

(vii) Section 13a-2 of this title.

(viii) Subsections (d) and (g) of section 12 of this title.

(ix) Section 20 of this title.

(B)(i) Except as provided in clause (ii) of this subparagraph, but notwithstanding any other provision of this chapter, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any broker or dealer subject to the registration requirement of paragraph (2), or any broker or dealer exempt from registration pursuant to paragraph (3), from any provision of this chapter or of any rule or regulation thereunder, to the extent the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

(ii) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

(C)(i) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall not be required to become a member of any futures association registered under section 21 of this title.

(ii) No futures association registered under section 21 of this title shall limit its members

¹ See References in Text note below.

from carrying an account, accepting an order, or transacting business with a broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3).

(b) Financial requirements for futures commission merchants and introducing brokers

Notwithstanding any other provisions of this chapter, no person desiring to register as futures commission merchant or as introducing broker shall be so registered unless he meets such minimum financial requirements as the Commission may by regulation prescribe as necessary to insure his meeting his obligation as a registrant, and each person so registered shall at all times continue to meet such prescribed minimum financial requirements: *Provided*, That such minimum financial requirements will be considered met if the applicant for registration or registrant is a member of a contract market or derivatives transaction execution facility and conforms to minimum financial standards and related reporting requirements set by such contract market or derivatives transaction execution facility in its bylaws, rules, regulations, or resolutions and approved by the Commission as adequate to effectuate the purposes of this subsection.

(c) Risk assessment for holding company systems

(1) As used in this subsection:

(i) The term “affiliated person” means any person directly or indirectly controlling, controlled by, or under common control with a futures commission merchant, as the Commission, by rule or regulation, may determine will effectuate the purposes of this subsection.

(ii) The term “Federal banking agency” shall have the same meaning as the term “appropriate Federal banking agency” in section 1813(q) of title 12.

(2)(A) Each registered futures commission merchant shall obtain such information and make and keep such records as the Commission, by rule or regulation, prescribes concerning the registered futures commission merchant’s policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its affiliated persons, other than a natural person.

(B) The records required under subparagraph (A) shall describe, in the aggregate, each of the futures and other financial activities conducted by, and the customary sources of capital and funding of, those of its affiliated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of the futures commission merchant, including its adjusted net capital, its liquidity, or its ability to conduct or finance its operations.

(C) The Commission, by rule or regulation, may require summary reports of such information to be filed by the futures commission merchant with the Commission no more frequently than quarterly.

(3)(A),² If, as a result of adverse market conditions or based on reports provided to the Com-

mission pursuant to paragraph (2) or other available information, the Commission reasonably concludes that the Commission has concerns regarding the financial or operational condition of any registered futures commission merchant, the Commission may require the futures commission merchant to make reports concerning the futures and other financial activities of any of such person’s affiliated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of the futures commission merchant.

(B) The Commission, in requiring reports pursuant to this paragraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission or to a contract market or derivatives transaction execution facility or other self-regulatory organization with primary responsibility for examining the registered futures commission merchant’s financial and operational condition.

(4)(A) in³ developing and implementing reporting requirements pursuant to paragraph (2) with respect to affiliated persons subject to examination by or reporting requirements of a Federal banking agency, the Commission shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Commission under this subsection that has been published for comment, the Commission shall respond in writing to the written comment before adopting the proposed rule. The Commission shall, at the request of the Federal banking agency, publish the comment and response in the Federal Register at the time of publishing the adopted rule.

(B)(i) Except as provided in clause (ii), a registered futures commission merchant shall be considered to have complied⁴ with a recordkeeping or reporting requirement adopted pursuant to paragraph (2) concerning an affiliated person that is subject to examination by, or reporting requirements of, a Federal banking agency if the futures commission merchant utilizes for the recordkeeping or reporting requirement copies of reports filed by the affiliated person with the Federal banking agency pursuant to section 161 of title 12, section 9 of the Federal Reserve Act (12 U.S.C. 321 et seq.), section 1817(a) of title 12, section 1467a(b) of title 12, or section 1844 of title 12.

(ii) The Commission may, by rule adopted pursuant to paragraph (2), require any futures commission merchant filing the reports with the Commission to obtain, maintain, or report supplemental information if the Commission makes an explicit finding that the supplemental information is necessary to inform the Commission regarding potential risks to the futures commission merchant. Prior to requiring any such supplemental information, the Commission shall first request the Federal banking agency to expand its reporting requirements to include the information.

³ So in original. Probably should be capitalized.

⁴ So in original. Probably should be “complied”.

² So in original. The comma probably should not appear.

(5) Prior to making a request pursuant to paragraph (3) for information with respect to an affiliated person that is subject to examination by or reporting requirements of a Federal banking agency, the Commission shall—

(A) notify the agency of the information required with respect to the affiliated person; and

(B) consult with the agency to determine whether the information required is available from the agency and for other purposes, unless the Commission determines that any delay resulting from the consultation would be inconsistent with ensuring the financial and operational condition of the futures commission merchant or the stability or integrity of the futures markets.

(6) Nothing in this subsection shall be construed to permit the Commission to require any futures commission merchant to obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained in the report.

(7) No information provided to or obtained by the Commission from any Federal banking agency pursuant to a request under paragraph (5) regarding any affiliated person that is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than as provided in section 12 of this title or section 12a(6) of this title), without the prior written approval of the Federal banking agency.

(8) The Commission shall notify a Federal banking agency of any concerns of the Commission regarding significant financial or operational risks resulting from the activities of any futures commission merchant to any affiliated person thereof that is subject to examination by or reporting requirements of the Federal banking agency.

(9) The Commission, by rule, regulation, or order, may exempt any person or class of persons under such terms and conditions and for such periods as the Commission shall provide in the rule, regulation, or order, from this subsection and the rules and regulations issued under this subsection. In granting the exemption, the Commission shall consider, among other factors—

(A) whether information of the type required under this subsection is available from a supervisory agency (as defined in section 3401(7) of title 12), a State insurance commission or similar State agency, the Securities and Exchange Commission, or a similar foreign regulator;

(B) the primary business of any affiliated person;

(C) the nature and extent of domestic or foreign regulation of the affiliated person's activities;

(D) the nature and extent of the registered futures commission merchant's commodity futures and options activities; and

(E) with respect to the registered futures commission merchant and its affiliated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from activities in the United States futures markets.

(10) Information required to be provided pursuant to this subsection shall be subject to section 12 of this title. Except as specifically provided in section 12 of this title and notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection, or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any affiliated person of a registered futures commission merchant.

(11) Nothing in paragraphs (1) through (10) shall be construed to supersede or to limit in any way the authority or powers of the Commission pursuant to any other provision of this chapter or regulations issued under this chapter.

(Sept. 21, 1922, ch. 369, § 4f, as added June 15, 1936, ch. 545, § 5, 49 Stat. 1495; amended Pub. L. 90-258, § 7, Feb. 19, 1968, 82 Stat. 28; Pub. L. 93-463, title I, § 103(a), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95-405, § 5, Sept. 30, 1978, 92 Stat. 869; Pub. L. 97-444, title II, § 208, Jan. 11, 1983, 96 Stat. 2302; Pub. L. 102-546, title II, §§ 207(b)(1), 229, Oct. 28, 1992, 106 Stat. 3604, 3619; Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(6), title II, § 252(b), (c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407, 2763A-447.)

REFERENCES IN TEXT

Section 6p of this title, referred to in subsec. (a)(4)(A)(vi), was in the original "Section 4p" which was translated as meaning the section 4p of the Commodity Exchange Act which is classified to section 6p of this title, rather than to the section 4p of that Act which is classified to section 6o-1 of this title, to reflect the probable intent of Congress.

Section 9 of the Federal Reserve Act, referred to in subsec. (c)(4)(B)(i), is section 9 of act Dec. 23, 1913, ch. 6, 38 Stat. 251, as amended, which is classified generally to subchapter VIII (§ 321 et seq.) of chapter 3 of Title 12, Banks and Banking.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554, § 1(a)(5) [title II, § 252(b)], designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (a)(4). Pub. L. 106-554, § 1(a)(5) [title II, § 252(c)], added par. (4).

Subsecs. (b), (c)(3)(B). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(6)], inserted "or derivatives transaction execution facility" after "contract market" wherever appearing.

1992—Subsec. (a). Pub. L. 102-546, §§ 207(b)(1), 229(1), redesignated par. (1) as subsec. (a) and substituted "floor broker, or floor trader" for "or floor broker".

Subsec. (b). Pub. L. 102-546, § 229(1), (2), redesignated par. (2) as subsec. (b) and substituted "this subsection" for "this paragraph (2)".

Subsec. (c). Pub. L. 102-546, § 229(3), added subsec. (c).

1983—Par. (1). Pub. L. 97-444, § 208(1), made grammatical changes, made registration provisions applicable to introducing brokers, and substituted "revoked pursuant to the provisions of this chapter" for "revoked after notice and hearing as prescribed in this chapter".

Par. (2). Pub. L. 97-444, § 208(2), made financial requirements applicable to introducing brokers.

1978—Par. (1). Pub. L. 95-405 substituted "Each registration shall expire on December 31 of the year for which issued or at such other time, not less than one year from the date of issuance, as the Commission may by rule, regulation, or order prescribe" for "All registrations shall expire on the 31st day of December of the year for which issued".

1974—Pub. L. 93-463 substituted "Commission" for "Secretary of Agriculture".

1968—Par. (1). Pub. L. 90-258, §7(a), substituted “this chapter” for “section 6g of this title”.

Par. (2). Pub. L. 90-258, §7(b), substituted provisions that prescribed financial requirements for registration as futures commission merchant be met and continued at all times and that such requirements will be considered met by membership in a contract market and compliance with its minimum financial standards and related reporting requirements for former provisions for display of futures commission merchants’ registration certificates.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 207(b)(1) of Pub. L. 102-546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102-546, set out as a note under section 6e of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 6g. Reporting and recordkeeping

(a) In general

Every person registered hereunder as futures commission merchant, introducing broker, floor broker, or floor trader shall make such reports as are required by the Commission regarding the transactions and positions of such person, and the transactions and positions of the customer thereof, in commodities for future delivery on any board of trade in the United States or elsewhere; shall keep books and records pertaining to such transactions and positions in such form and manner and for such period as may be required by the Commission; and shall keep such books and records open to inspection by any representative of the Commission or the United States Department of Justice.

(b) Daily trading records: registered entities

Every registered entity shall maintain daily trading records. The daily trading records shall include such information as the Commission shall prescribe by rule.

(c) Daily trading records: floor brokers, introducing brokers, and futures commission merchants

Floor brokers, introducing brokers, and futures commission merchants shall maintain daily trading records for each customer in such

manner and form as to be identifiable with the trades referred to in subsection (b) of this section.

(d) Daily trading records: form and reports

Daily trading records shall be maintained in a form suitable to the Commission for such period as may be required by the Commission. Reports shall be made from the records maintained at such times and at such places and in such form as the Commission may prescribe by rule, order, or regulation in order to protect the public interest and the interest of persons trading in commodity futures.

(e) Disclosure of information

Before the beginning of trading each day, the exchange shall, insofar as is practicable and under terms and conditions specified by the Commission, make public the volume of trading on each type of contract for the previous day and such other information as the Commission deems necessary in the public interest and prescribes by rule, order, or regulation.

(f) Authority of Commission to make separate determinations unimpaired

Nothing contained in this section shall be construed to prohibit the Commission from making separate determinations for different registered entities when such determinations are warranted in the judgment of the Commission.

(Sept. 21, 1922, ch. 369, §4g, as added June 15, 1936, ch. 545, §5, 49 Stat. 1496; amended Pub. L. 90-258, §8, Feb. 19, 1968, 82 Stat. 28; Pub. L. 93-463, title I, §103(a), (f), title IV, §415, Oct. 23, 1974, 88 Stat. 1392, 1415; Pub. L. 95-405, §6, Sept. 30, 1978, 92 Stat. 869; Pub. L. 97-444, title II, §209, Jan. 11, 1983, 96 Stat. 2302; Pub. L. 102-546, title II, §207(b)(1), title IV, §402(5), Oct. 28, 1992, 106 Stat. 3604, 3624; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(7)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407.)

AMENDMENTS

2000—Subsec. (b). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(7)(A)], substituted “registered entity” for “clearinghouse and contract market”.

Subsec. (f). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(7)(B)], substituted “registered entities” for “clearinghouses, contract markets, and exchanges”.

1992—Subsec. (a). Pub. L. 102-546, §§207(b)(1), 402(5)(A), redesignated par. (1) as subsec. (a) and substituted “floor broker, or floor trader” for “or floor broker”.

Subsec. (b). Pub. L. 102-546, §402(5)(A), redesignated par. (2) as subsec. (b).

Subsec. (c). Pub. L. 102-546, §402(5), redesignated par. (3) as subsec. (c) and substituted “subsection (b)” for “paragraph (2)”.

Subsecs. (d) to (f). Pub. L. 102-546, §402(5)(A), redesignated pars. (4) to (6) as subsecs. (d) to (f), respectively.

1983—Par. (1). Pub. L. 97-444, §209(1), made reporting and recordkeeping requirements applicable to introducing brokers.

Par. (2). Pub. L. 97-444, §209(2), made customer daily trading records requirement applicable to introducing brokers.

1978—Par. (3). Pub. L. 95-405 substituted “Floor brokers” for “Brokers”.

1974—Par. (1). Pub. L. 93-463, §§103(a), (f), 415, designated existing provisions as par. (1) and substituted “Commission” for “Secretary of Agriculture” and “United States Department of Agriculture”.

Pars. (2) to (6). Pub. L. 93-463, §415, added pars. (2) to (6).

1968—Pub. L. 90-258 rephrased existing provisions to express reporting and recordkeeping requirements as a

positive obligation of futures commission merchants and floor brokers, rather than as a ground for revoking or suspending registration and struck out provisions for revocation or suspension of registration. See section 9 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 207(b)(1) of Pub. L. 102-546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102-546, set out as a note under section 6e of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463 see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 6h. False self-representation as registered entity member prohibited

It shall be unlawful for any person falsely to represent such person to be a member of a registered entity or the representative or agent of such member, or to be a registrant under this chapter or the representative or agent of any registrant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery, or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through a member of, any registered entity.

(Sept. 21, 1922, ch. 369, § 4h, as added June 15, 1936, ch. 545, § 5, 49 Stat. 1496; amended Pub. L. 97-444, title II, § 210, Jan. 11, 1983, 96 Stat. 2302; Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(8)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407.)

AMENDMENTS

2000—Pub. L. 106-554 substituted “registered entity” for “contract market” in two places.

1983—Pub. L. 97-444 struck out provisions formerly designated as par. (1) relating to conduct of offices or places of business anywhere in the United States or its territories that were used for dealing in commodities for future delivery unless such dealings were executed or consummated by or through a member of a contract market, which provisions were transferred to section 6(a) of this title, and broadened remaining provisions, formerly designated as par. (2), to prohibit false representations that a person is registered with the Commission in any capacity, and not only as a futures commission merchant, as previously provided.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 6i. Reports of deals equal to or in excess of trading limits; books and records; cash and controlled transactions

It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility—

(1) if such person shall directly or indirectly make such contracts with respect to any commodity or any future of such commodity during any one day in an amount equal to or in excess of such amount as shall be fixed from time to time by the Commission, and

(2) if such person shall directly or indirectly have or obtain a long or short position in any commodity or any future of such commodity equal to or in excess of such amount as shall be fixed from time to time by the Commission,

unless such person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in clauses (1) and (2) hereof as the Commission may by rule or regulation require and unless, in accordance with rules and regulations of the Commission, such person shall keep books and records of all such transactions and positions and transactions and positions in any such commodity traded on or subject to the rules of any other board of trade, and of cash or spot transactions in, and inventories and purchase and sale commitments of such commodity. Such books and records shall show complete details concerning all such transactions, positions, inventories, and commitments, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the Commission or the Department of Justice. For the purposes of this section, the futures and cash or spot transactions and positions of any person shall include such transactions and positions of any persons directly or indirectly controlled by such person.

(Sept. 21, 1922, ch. 369, § 4i, as added June 15, 1936, ch. 545, § 5, 49 Stat. 1496; amended Pub. L. 90-258, § 9, Feb. 19, 1968, 82 Stat. 28; Pub. L. 93-463, title I, § 103(a), (f), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 97-444, title II, § 211, Jan. 11, 1983, 96 Stat. 2303; Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(9)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407.)

AMENDMENTS

2000—Pub. L. 106-554 inserted “or derivatives transaction execution facility” after “contract market” in introductory provisions.

1983—Pub. L. 97-444 amended section generally by substantially restating provisions and inserting requirement that persons whose transactions and positions in any cash commodity or commodity future are equal to or in excess of amounts fixed by the Commis-

sion, must keep books and records of such transactions and positions as well as books and records of any such commodity traded on or subject to rules of any other board of trade, whether or not such person is required to file reports with the Commission concerning such transactions and positions.

1974—Pub. L. 93-463 substituted “Commission” for “Secretary of Agriculture” and “United States Department of Agriculture”.

1968—Pub. L. 90-258 required recordkeeping of positions and of cash or spot transactions in commodities entered into, and inventories and purchase and sale commitments of commodities held, in any month in which reports are required to be kept, including details concerning positions, inventories, and commitments, and included controlled transactions and positions in the futures and cash or spot transactions and positions of any person.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 6j. Restrictions on dual trading in security futures products on designated contract markets and registered derivatives transaction execution facilities

(a) Issuance of regulations

The Commission shall issue regulations to prohibit the privilege of dual trading in security futures products on each contract market and registered derivatives transaction execution facility. The regulations issued by the Commission under this section—

(1) shall provide that the prohibition of dual trading thereunder shall take effect upon issuance of the regulations; and

(2) shall provide exceptions, as the Commission determines appropriate, to ensure fairness and orderly trading in security futures product markets, including—

(A) exceptions for spread transactions and the correction of trading errors;

(B) allowance for a customer to designate in writing not less than once annually a named floor broker to execute orders for such customer, notwithstanding the regulations to prohibit the privilege of dual trading required under this section; and

(C) other measures reasonably designed to accommodate unique or special characteristics of individual boards of trade or contract markets, to address emergency or unusual market conditions, or otherwise to further the public interest consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and with the purposes of this section.

(b) “Dual trading” defined

As used in this section, the term “dual trading” means the execution of customer orders by a floor broker during the same trading session in which the floor broker executes any trade in the same contract market or registered derivatives transaction execution facility for—

(1) the account of such floor broker;

(2) an account for which such floor broker has trading discretion; or

(3) an account controlled by a person with whom such floor broker has a relationship through membership in a broker association.

(c) “Broker association” defined

As used in this section, the term “broker association” shall include two or more contract market members or registered derivatives transaction execution facility members with floor trading privileges of whom at least one is acting as a floor broker, who—

(1) engage in floor brokerage activity on behalf of the same employer,

(2) have an employer and employee relationship which relates to floor brokerage activity,

(3) share profits and losses associated with their brokerage or trading activity, or

(4) regularly share a deck of orders.

(Sept. 21, 1922, ch. 369, §4j, as added Pub. L. 93-463, title II, §203, Oct. 23, 1974, 88 Stat. 1396; amended Pub. L. 94-16, §2, Apr. 16, 1975, 89 Stat. 77; Pub. L. 102-546, title I, §§101, 102(a), Oct. 28, 1992, 106 Stat. 3591, 3594; Pub. L. 106-554, §1(a)(5) [title II, §251(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-442.)

AMENDMENTS

2000—Pub. L. 106-554 amended section generally. Prior to amendment, section required Commission to issue regulations to prohibit the privilege of dual trading on contract markets, allowed for certain exemptions, required Commission to make determinations relating to trading by floor brokers and futures commission merchants, and restricted trading among members of broker associations.

1992—Subsec. (a). Pub. L. 102-546, §101(a)(3), added subsec. (a).

Subsec. (b). Pub. L. 102-546, §101(a)(1), (2), redesignated par. (1) as subsec. (b) and substituted “If, in addition to the regulations issued pursuant to subsection (a) of this section, the Commission has reason to believe that dual trading-related or facilitated abuses are not being or cannot be effectively addressed by subsection (a) of this section, the Commission shall” for “The Commission shall within nine months after the effective date of the Commodity Futures Trading Commission Act of 1974, and subsequently when it determines that changes are required.”.

Subsec. (c). Pub. L. 102-546, §101(a)(1), redesignated par. (2) as subsec. (c).

Subsec. (d). Pub. L. 102-546, §102(a), added subsec. (d). 1975—Pub. L. 94-16 substituted “nine months” for “six months” in pars. (1) and (2).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 102(b) of Pub. L. 102-546 provided that: “The amendment made by subsection (a) [amending this section] shall become effective two hundred and seventy days after the date of enactment of this Act [Oct. 28, 1992].”

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§ 6k. Registration of associates of futures commission merchants, commodity pool operators, and commodity trading advisors; required disclosure of disqualifications; exemptions for associated persons

(1) It shall be unlawful for any person to be associated with a futures commission merchant as a partner, officer, or employee, or to be associated with an introducing broker as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation or acceptance of customers' orders (other than in a clerical capacity) or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this chapter as an associated person of such futures commission merchant or of such introducing broker and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a futures commission merchant or introducing broker to permit such a person to become or remain associated with the futures commission merchant or introducing broker in any such capacity if such futures commission merchant or introducing broker knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, or introducing broker (and such registration is not suspended or revoked) need not also register under this paragraph.

(2) It shall be unlawful for any person to be associated with a commodity pool operator as a partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this chapter as an associated person of such commodity pool operator and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity pool operator to permit such a person to become or remain associated with the commodity pool operator in any such capacity if the commodity pool operator knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity pool operator, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this paragraph. The Commission may exempt any person or class of persons from having to register under this paragraph by rule, regulation, or order.

(3) It shall be unlawful for any person to be associated with a commodity trading advisor as a

partner, officer, employee, consultant, or agent (or any person occupying a similar status or performing similar functions), in any capacity which involves (i) the solicitation of a client's or prospective client's discretionary account or (ii) the supervision of any person or persons so engaged, unless such person is registered with the Commission under this chapter as an associated person of such commodity trading advisor and such registration shall not have expired, been suspended (and the period of suspension has not expired), or been revoked. It shall be unlawful for a commodity trading advisor to permit such a person to become or remain associated with the commodity trading advisor in any such capacity if the commodity trading advisor knew or should have known that such person was not so registered or that such registration had expired, been suspended (and the period of suspension has not expired), or been revoked. Any individual who is registered as a floor broker, futures commission merchant, introducing broker, commodity trading advisor, or as an associated person of another category of registrant under this section (and such registration is not suspended or revoked) need not also register under this paragraph. The Commission may exempt any person or class of persons from having to register under this paragraph by rule, regulation, or order.

(4) Any person desiring to be registered as an associated person of a futures commission merchant, of an introducing broker, of a commodity pool operator, or of a commodity trading advisor shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire at such time as the Commission may by rule, regulation, or order prescribe.

(5)¹ It shall be unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known of facts regarding such associated person that are set forth as statutory disqualifications in section 12a(2) of this title, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed.

(5)¹ Any associated person of a broker or dealer that is registered with the Securities and Exchange Commission, and who limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery or any option on such a contract, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products, shall be exempt from the following provisions of this chapter and the rules thereunder:

(A) Subsections (b), (d), (e), and (g) of section 6c of this title.

(B) Sections 6d, 6e, and 6h of this title.

¹ So in original. Two pars.(5) have been enacted.

(C) Subsections (b) and (c) of section 6f of this title.

(D) Section 6j of this title.

(E) Paragraph (1) of this section.

(F) Section 6p² of this title.

(G) Section 13a-2 of this title.

(H) Subsections (d) and (g) of section 12 of this title.

(I) Section 20 of this title.

(Sept. 21, 1922, ch. 369, §4k, as added Pub. L. 93-463, title II, §204(a), Oct. 23, 1974, 88 Stat. 1396; amended Pub. L. 95-405, §7, Sept. 30, 1978, 92 Stat. 869; Pub. L. 97-444, title II, §212, Jan. 11, 1983, 96 Stat. 2303; Pub. L. 106-554, §1(a)(5) [title II, §252(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-448.)

REFERENCES IN TEXT

Section 6p of this title, referred to in par. (5)(F), was in the original "Section 4p" which was translated as meaning the section 4p of the Commodity Exchange Act which is classified to section 6p of this title, rather than to the section 4p of that Act which is classified to section 6o-1 of this title, to reflect the probable intent of Congress.

AMENDMENTS

2000—Par. (5). Pub. L. 106-554, §1(a)(5) [title II, §252(d)], which directed amendment of this section by "inserting after paragraph (4), as added by subsection (c) of this section" a new par. (5) relating to exempting associated persons or dealers from provisions of this chapter, was executed by adding that par. (5) at the end. Section 1(a)(5)[title II, §252(c)] did not add a par. (4) to this section.

1983—Par. (1). Pub. L. 97-444 amended par. (1) generally to apply to introducing brokers and persons associated with introducing brokers.

Par. (2). Pub. L. 97-444 added par. (2). Former par. (2) redesignated (4).

Par. (3). Pub. L. 97-444 added par. (3). Former par. (3), which empowered Commission to authorize a registered futures association to perform any portion of the registration functions under this section, in accordance with rules approved by the Commission, and subject to the provisions of this chapter applicable to registrations granted by the Commission, was struck out.

Par. (4). Pub. L. 97-444 redesignated former par. (2) as (4) and substituted "Any person desiring to be registered as an associated person of a futures commission merchant, of an introducing broker, of a commodity pool operator, or of a commodity trading advisor shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire at such time as the Commission may by rule, regulation, or order prescribe" for "Any such person desiring to be registered shall make application to the Commission in the form and manner prescribed by the Commission, giving such information and facts as the Commission may deem necessary concerning the applicant. Such person, when registered hereunder, shall likewise continue to report and furnish to the Commission such information as the Commission may require. Such registration shall expire two years after the effective date thereof or at such other time, not less than one year from the date of issuance thereof, as the Commission may by rule, regulation, or order prescribe and shall be renewed upon application therefor, unless the registration has been suspended (and the period of such suspen-

sion has not expired) or revoked after notice and hearing as prescribed in section 9 of this title: *Provided*, That upon initial registration, unless the Commission otherwise prescribes by rule, regulation, or order, the effective period of such registration shall be not more than two years nor less than one year from the effective date thereof".

Par. (5). Pub. L. 97-444 added par. (5).

1978—Par. (2). Pub. L. 95-405, §7(1), inserted provisions authorizing the Commission to prescribe the period of registration of not less than one year for associated persons.

Par. (3). Pub. L. 95-405, §7(2), added par. (3).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective 120 days after Jan. 11, 1983, or such earlier date as the Commission shall prescribe by regulation, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§ 6l. Commodity trading advisors and commodity pool operators; Congressional finding

It is hereby found that the activities of commodity trading advisors and commodity pool operators are affected with a national public interest in that, among other things—

(1) their advice, counsel, publications, writings, analyses, and reports are furnished and distributed, and their contracts, solicitations, subscriptions, agreements, and other arrangements with clients take place and are negotiated and performed by the use of the mails and other means and instrumentalities of interstate commerce;

(2) their advice, counsel, publications, writings, analyses, and reports customarily relate to and their operations are directed toward and cause the purchase and sale of commodities for future delivery on or subject to the rules of contract markets or derivatives transaction execution facilities; and

(3) the foregoing transactions occur in such volume as to affect substantially transactions on contract markets or derivatives transaction execution facilities.

(Sept. 21, 1922, ch. 369, §4l, as added Pub. L. 93-463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1397; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(10)], Dec. 21, 2000, 114 Stat. 2763, 2763A-408.)

AMENDMENTS

2000—Pars. (2), (3). Pub. L. 106-554 inserted "or derivatives transaction execution facilities" after "contract markets".

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§ 6m. Use of mails or other means or instrumentalities of interstate commerce by commodity trading advisors and commodity pool operators; relation to other law

(1) It shall be unlawful for any commodity trading advisor or commodity pool operator, un-

² See References in Text note below.

less registered under this chapter, to make use of the mails or any means or instrumentality of interstate commerce in connection with his business as such commodity trading advisor or commodity pool operator: *Provided*, That the provisions of this section shall not apply to any commodity trading advisor who, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and who does not hold himself out generally to the public as a commodity trading advisor. The provisions of this section shall not apply to any commodity trading advisor who is a (1) dealer, processor, broker, or seller in cash market transactions of any commodity specifically set forth in section 2(a) of this title prior to October 23, 1974, (or products thereof) or (2) nonprofit, voluntary membership, general farm organization, who provides advice on the sale or purchase of any commodity specifically set forth in section 2(a) of this title prior to October 23, 1974; if the advice by the person described in clause (1) or (2) of this sentence as a commodity trading advisor is solely incidental to the conduct of that person's business: *Provided*, That such person shall be subject to proceedings under section 18 of this title.

(2) Nothing in this chapter shall relieve any person of any obligation or duty, or affect the availability of any right or remedy available to the Securities and Exchange Commission or any private party arising under the Securities Act of 1933 [15 U.S.C. 77a et seq.] or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] governing the issuance, offer, purchase, or sale of securities of a commodity pool, or of persons engaged in transactions with respect to such securities, or reporting by a commodity pool.

(3) Subsection (1) of this section shall not apply to any commodity trading advisor that is registered with the Securities and Exchange Commission as an investment adviser whose business does not consist primarily of acting as a commodity trading advisor, as defined in section 1a(6) of this title, and that does not act as a commodity trading advisor to any investment trust, syndicate, or similar form of enterprise that is engaged primarily in trading in any commodity for future delivery on or subject to the rules of any contract market or registered derivatives transaction execution facility.

(Sept. 21, 1922, ch. 369, §4m, as added Pub. L. 93-463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1398; amended Pub. L. 95-405, §8, Sept. 30, 1978, 92 Stat. 870; Pub. L. 97-444, title I, §103, Jan. 11, 1983, 96 Stat. 2296; Pub. L. 106-554, §1(a)(5) [title II, §251(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A-443.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in par. (2), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in par. (2), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

AMENDMENTS

2000—Par. (3). Pub. L. 106-554 added par. (3).

1983—Pub. L. 97-444 designated existing provisions as par. (1) and added par. (2).

1978—Pub. L. 95-405 inserted provisions relating to applicability of this section to commodity trading advisors who are dealers, processors, brokers, or sellers in cash market transactions of specifically listed commodities or nonprofit, voluntary membership, general farm organizations who provide advice on sale or purchase of specifically listed commodities if the advice by the person described in cl. (1) or (2) of this sentence is incidental solely to the conduct to the person's business and that such person be subject to proceedings under section 18 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§6n. Registration of commodity trading advisors and commodity pool operators; application; expiration and renewal; record keeping and reports; disclosure; statements of account

(1) Any commodity trading advisor or commodity pool operator, or any person who contemplates becoming a commodity trading advisor or commodity pool operator, may register under this chapter by filing an application with the Commission. Such application shall contain such information, in such form and detail, as the Commission may, by rules and regulations, prescribe as necessary or appropriate in the public interest, including the following:

(A) the name and form of organization, including capital structure, under which the applicant engages or intends to engage in business; the name of the State under the laws of which he is organized; the location of his principal business office and branch offices, if any; the names and addresses of all partners, officers, directors, and persons performing similar functions or, if the applicant be an individual, of such individual; and the number of employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of the applicant and of his partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of the applicant, including the manner of giving advice and rendering of analyses or reports;

(D) the nature and scope of the authority of the applicant with respect to clients' funds and accounts;

(E) the basis upon which the applicant is or will be compensated; and

(F) such other information as the Commission may require to determine whether the applicant is qualified for registration.

(2) Each registration under this section shall expire on the 30th day of June of each year, or at such other time, not less than one year from the effective date thereof, as the Commission may by rule, regulation, or order prescribe, and shall be renewed upon application therefor subject to the same requirements as in the case of an original application.

(3)(A) Every commodity trading advisor and commodity pool operator registered under this chapter shall maintain books and records and file such reports in such form and manner as may be prescribed by the Commission. All such books and records shall be kept for a period of at least three years, or longer if the Commission so directs, and shall be open to inspection by any representative of the Commission or the Department of Justice. Upon the request of the Commission, a registered commodity trading advisor or commodity pool operator shall furnish the name and address of each client, subscriber, or participant, and submit samples or copies of all reports, letters, circulars, memorandums, publications, writings, or other literature or advice distributed to clients, subscribers, or participants, or prospective clients, subscribers, or participants.

(B) Unless otherwise authorized by the Commission by rule or regulation, all commodity trading advisors and commodity pool operators shall make a full and complete disclosure to their subscribers, clients, or participants of all futures market positions taken or held by the individual principals of their organization.

(4) Every commodity pool operator shall regularly furnish statements of account to each participant in his operations. Such statements shall be in such form and manner as may be prescribed by the Commission and shall include complete information as to the current status of all trading accounts in which such participant has an interest.

(Sept. 21, 1922, ch. 369, §4n, as added Pub. L. 93-463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1398; amended Pub. L. 95-405, §9, Sept. 30, 1978, 92 Stat. 870; Pub. L. 97-444, title II, §213, Jan. 11, 1983, 96 Stat. 2305.)

AMENDMENTS

1983—Par. (5). Pub. L. 97-444 struck out par. (5) which authorized Commission, without hearing, to deny registration to any person as a commodity trading advisor or commodity pool operator if such person was subject to an outstanding order under this chapter denying to such person trading privileges on any contract market, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, or floor broker, or suspending or expelling such person from membership on any contract market.

Par. (6). Pub. L. 97-444 struck out par. (6) which authorized Commission to deny registration or revoke or suspend the registration of any commodity trading advisor or commodity pool operator if the Commission found that such denial, revocation, or suspension was in the public interest and that such person had been guilty of certain specified activities. See section 12a(2), (3), and (4) of this title.

1978—Par. (2). Pub. L. 95-405, §9(1)–(3), redesignated par. (3) as (2) and substituted “Each registration” for “All registrations” and inserted “or at such other time, not less than one year from the effective date thereof, as the Commission may rule, regulation, or

order prescribe,” after “June of each year.”. Former par. (2), which provided that registration under this section becomes effective thirty days after the receipt of such application by the Commission, or within such shorter period of time as the Commission may determine, was struck out.

Pars. (3) to (6). Pub. L. 95-405, §9(1), redesignated pars. (4) to (7) as (3) to (6), respectively. Former par. (3) redesignated (2).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§60. Fraud and misrepresentation by commodity trading advisors, commodity pool operators, and associated persons

(1) It shall be unlawful for a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

(2) It shall be unlawful for any commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator registered under this chapter to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that such person's abilities or qualifications have in any respect been passed upon, by the United States or any agency or officer thereof. This section shall not be construed to prohibit a statement that a person is registered under this chapter as a commodity trading advisor, associated person of a commodity trading advisor, commodity pool operator, or associated person of a commodity pool operator, if such statement is true in fact and if the effect of such registration is not misrepresented.

(Sept. 21, 1922, ch. 369, §4o, as added Pub. L. 93-463, title II, §205(a), Oct. 23, 1974, 88 Stat. 1399; amended Pub. L. 95-405, §10, Sept. 30, 1978, 92 Stat. 870; Pub. L. 97-444, title II, §214, Jan. 11, 1983, 96 Stat. 2305.)

AMENDMENTS

1983—Par. (1). Pub. L. 97-444 made the antifraud prohibition applicable to an associated person of a commodity trading advisor or a commodity pool operator.

Par. (2). Pub. L. 97-444 made the misrepresentation prohibition applicable to an associated person of a com-

modity training advisor or a commodity pool operator, authorized registration statements of such persons, and substituted “such person” and “such person’s abilities” for “he” before “has been sponsored” and “his abilities”, respectively.

1978—Par. (1). Pub. L. 95-405 struck out “registered under this chapter” after “pool operator”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§ 60-1. Special procedures to encourage and facilitate bona fide hedging by agricultural producers

(a) Authority

The Commission shall consider issuing rules or orders which—

(1) prescribe procedures under which each contract market is to provide for orderly delivery, including temporary storage costs, of any agricultural commodity enumerated in section 1a(4) of this title which is the subject of a contract for purchase or sale for future delivery;

(2) increase the ease with which domestic agricultural producers may participate in contract markets, including by addressing cost and margin requirements, so as to better enable the producers to hedge price risk associated with their production;

(3) provide flexibility in the minimum quantities of such agricultural commodities that may be the subject of a contract for purchase or sale for future delivery that is traded on a contract market, to better allow domestic agricultural producers to hedge such price risk; and

(4) encourage contract markets to provide information and otherwise facilitate the participation of domestic agricultural producers in contract markets.

(b) Report

Within 1 year after December 21, 2000, the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the steps it has taken to implement this section and on the activities of contract markets pursuant to this section.

(Sept. 21, 1922, ch. 369, §4p, as added Pub. L. 106-554, §1(a)(5) [title I, §121], Dec. 21, 2000, 114 Stat. 2763, 2763A-404.)

CODIFICATION

Another section 4p of act Sept. 21, 1922, is classified to section 6p of this title.

§ 6p. Standards and examinations

(a) The Commission may specify by rules and regulations appropriate standards with respect

to training, experience, and such other qualifications as the Commission finds necessary or desirable to insure the fitness of persons required to be registered with the Commission. In connection therewith, the Commission may prescribe by rules and regulations the adoption of written proficiency examinations to be given to applicants for registration and the establishment of reasonable fees to be charged to such applicants to cover the administration of such examinations. The Commission may further prescribe by rules and regulations that, in lieu of examinations administered by the Commission, futures associations registered under section 21 of this title, contract markets, or derivatives transaction execution facilities may adopt written proficiency examinations to be given to applicants for registration and charge reasonable fees to such applicants to cover the administration of such examinations. Notwithstanding any other provision of this section, the Commission may specify by rules and regulations such terms and conditions as it deems appropriate to protect the public interest wherein exception to any written proficiency examination shall be made with respect to individuals who have demonstrated, through training and experience, the degree of proficiency and skill necessary to protect the interests of customers, clients, pool participants, or other members of the public with whom such individuals deal.

(b) The Commission shall issue regulations to require new registrants, within six months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under this chapter, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, derivatives transaction execution facility, registered futures association, or other self-regulatory organization, or any other applicable Federal or state¹ law, rule or regulation.

(Sept. 21, 1922, ch. 369, §4p, as added Pub. L. 93-463, title II, §206, Oct. 23, 1974, 88 Stat. 1400; amended Pub. L. 97-444, title II, §215, Jan. 11, 1983, 96 Stat. 2305; Pub. L. 102-546, title II, §210(a), Oct. 28, 1992, 106 Stat. 3607; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(11)], Dec. 21, 2000, 114 Stat. 2763, 2763A-408.)

CODIFICATION

Another section 4p of act Sept. 21, 1922, is classified to section 60-1 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(11)(A)], substituted “title, contract markets, or derivatives transaction execution facilities” for “title or contract markets”.

Subsec. (b). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(11)(B)], inserted “derivatives transaction execution facility,” after “contract market.”

1992—Pub. L. 102-546 designated existing provisions as subsec. (a) and added subsec. (b).

1983—Pub. L. 97-444 substituted “persons required to be registered with the Commission” for “futures commission merchants, floor brokers, and those persons as-

¹ So in original. Probably should be capitalized.

sociated with futures commission merchants or floor brokers” in first sentence, “customers, clients, pool participants, or other members of the public with whom such individuals deal” for “the customers of futures commission merchants and floor brokers” in last sentence, and in second and third sentences struck out “as futures commission merchants, floor brokers, and those persons associated with futures commission merchants or floor brokers,” after “applicants for registration”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

REGULATIONS

Section 210(b) of Pub. L. 102-546 provided that: “The Commodity Futures Trading Commission shall issue the regulations required by section 4p(b) of the Commodity Exchange Act [7 U.S.C. 6p(b)], as added by subsection (a), no later than one hundred and eighty days after the date of enactment of this Act [Oct. 28, 1992].”

§ 7. Designation of boards of trade as contract markets

(a) Applications

A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials and records the Commission may require consistent with this chapter.

(b) Criteria for designation

(1) In general

To be designated as a contract market, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this subsection.

(2) Prevention of market manipulation

The board of trade shall have the capacity to prevent market manipulation through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(3) Fair and equitable trading

The board of trade shall establish and enforce trading rules to ensure fair and equitable trading through the facilities of the contract market, and the capacity to detect, investigate, and discipline any person that violates the rules. The rules may authorize—

- (A) transfer trades or office trades;
- (B) an exchange of—
 - (i) futures in connection with a cash commodity transaction;
 - (ii) futures for cash commodities; or
 - (iii) futures for swaps; or
- (C) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded,

or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

(4) Trade execution facility

The board of trade shall—

- (A) establish and enforce rules defining, or specifications detailing, the manner of operation of the trade execution facility maintained by the board of trade, including rules or specifications describing the operation of any electronic matching platform; and
- (B) demonstrate that the trade execution facility operates in accordance with the rules or specifications.

(5) Financial integrity of transactions

The board of trade shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market, including the clearance and settlement of the transactions with a derivatives clearing organization.

(6) Disciplinary procedures

The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

(7) Public access

The board of trade shall provide the public with access to the rules, regulations, and contract specifications of the board of trade.

(8) Ability to obtain information

The board of trade shall establish and enforce rules that will allow the board of trade to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

(c) Existing contract markets

A board of trade that is designated as a contract market on December 21, 2000, shall be considered to be a designated contract market under this section.

(d) Core principles for contract markets

(1) In general

To maintain the designation of a board of trade as a contract market, the board of trade shall comply with the core principles specified in this subsection. The board of trade shall have reasonable discretion in establishing the manner in which it complies with the core principles.

(2) Compliance with rules

The board of trade shall monitor and enforce compliance with the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market.

(3) Contracts not readily subject to manipulation

The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

(4) Monitoring of trading

The board of trade shall monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process.

(5) Position limitations or accountability

To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.

(6) Emergency authority

The board of trade shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to—

(A) liquidate or transfer open positions in any contract;

(B) suspend or curtail trading in any contract; and

(C) require market participants in any contract to meet special margin requirements.

(7) Availability of general information

The board of trade shall make available to market authorities, market participants, and the public information concerning—

(A) the terms and conditions of the contracts of the contract market; and

(B) the mechanisms for executing transactions on or through the facilities of the contract market.

(8) Daily publication of trading information

The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

(9) Execution of transactions

The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions.

(10) Trade information

The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market.

(11) Financial integrity of contracts

The board of trade shall establish and enforce rules providing for the financial integrity of any contracts traded on the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization), and rules to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

(12) Protection of market participants

The board of trade shall establish and enforce rules to protect market participants

from abusive practices committed by any party acting as an agent for the participants.

(13) Dispute resolution

The board of trade shall establish and enforce rules regarding and provide facilities for alternative dispute resolution as appropriate for market participants and any market intermediaries.

(14) Governance fitness standards

The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph).

(15) Conflicts of interest

The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market and establish a process for resolving such conflicts of interest.

(16) Composition of boards of mutually owned contract markets

In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.

(17) Recordkeeping

The board of trade shall maintain records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of 5 years.

(18) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the board of trade shall endeavor to avoid—

(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

(B) imposing any material anticompetitive burden on trading on the contract market.

(e) Current agricultural commodities

(1) Subject to paragraph (2) of this subsection, a contract for purchase or sale for future delivery of an agricultural commodity enumerated in section 1a(4) of this title that is available for trade on a contract market, as of December 21, 2000, may be traded only on a contract market designated under this section.

(2) In order to promote responsible economic or financial innovation and fair competition, the Commission, on application by any person, after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options on such contracts to be conducted on a derivatives transaction execution facility.

(Sept. 21, 1922, ch. 369, §5, as added Pub. L. 106-554, §1(a)(5) [title I, §110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-384.)

PRIOR PROVISIONS

A prior section 7, acts Sept. 21, 1922, ch. 369, §5, 42 Stat. 1000; June 15, 1936, ch. 545, §§2, 6, 49 Stat. 1491,

1497; Pub. L. 90-258, §§10, 11, Feb. 19, 1968, 82 Stat. 29; Pub. L. 93-463, title I, §103(a), (f), (g), title II, §207, Oct. 23, 1974, 88 Stat. 1392, 1400; Pub. L. 102-546, title II, §§201(c), 209(b)(2), Oct. 28, 1992, 106 Stat. 3597, 3606, related to conditions and requirements for designation of boards of trade as contract markets, prior to repeal by Pub. L. 106-554, §1(a)(5) [title I, §110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-384.

§ 7a. Derivatives transaction execution facilities

(a) In general

In lieu of compliance with the contract market designation requirements of sections 6(a) and 7 of this title, a board of trade may elect to operate as a registered derivatives transaction execution facility if the facility is—

- (1) designated as a contract market and meets the requirements of this section; or
- (2) registered as a derivatives transaction execution facility under subsection (c) of this section.

(b) Requirements for trading

(1) In general

A registered derivatives transaction execution facility under subsection (a) of this section may trade any contract of sale of a commodity for future delivery (or option on such a contract) on or through the facility only by satisfying the requirements of this section.

(2) Requirements for underlying commodities

A registered derivatives transaction execution facility may trade any contract of sale of a commodity for future delivery (or option on such a contract) only if—

- (A) the underlying commodity has a nearly inexhaustible deliverable supply;
- (B) the underlying commodity has a deliverable supply that is sufficiently large that the contract is highly unlikely to be susceptible to the threat of manipulation;
- (C) the underlying commodity has no cash market;
- (D)(i) the contract is a security futures product, and (ii) the registered derivatives transaction execution facility is a national securities exchange registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.];
- (E) the Commission determines, based on the market characteristics, surveillance history, self-regulatory record, and capacity of the facility that trading in the contract (or option) is highly unlikely to be susceptible to the threat of manipulation; or
- (F) except as provided in section 7(e)(2) of this title, the underlying commodity is a commodity other than an agricultural commodity enumerated in section 1a(4) of this title, and trading access to the facility is limited to eligible commercial entities trading for their own account.

(E) the Commission determines, based on the market characteristics, surveillance history, self-regulatory record, and capacity of the facility that trading in the contract (or option) is highly unlikely to be susceptible to the threat of manipulation; or

(3) Eligible traders

To trade on a registered derivatives transaction execution facility, a person shall—

- (A) be an eligible contract participant; or
- (B) be a person trading through a futures commission merchant that—
 - (i) is registered with the Commission;
 - (ii) is a member of a futures self-regulatory organization or, if the person trades

only security futures products on the facility, a national securities association registered under section 15A(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78o-3(a)];

- (iii) is a clearing member of a derivatives clearing organization; and
- (iv) has net capital of at least \$20,000,000.

(4) Trading by contract markets

A board of trade that is designated as a contract market shall, to the extent that the contract market also operates a registered derivatives transaction execution facility—

- (A) provide a physical location for the contract market trading of the board of trade that is separate from trading on the derivatives transaction execution facility of the board of trade; or
- (B) if the board of trade uses the same electronic trading system for trading on the contract market and derivatives transaction execution facility of the board of trade, identify whether the electronic trading is taking place on the contract market or the derivatives transaction execution facility.

(c) Criteria for registration

(1) In general

To be registered as a registered derivatives transaction execution facility, the board of trade shall be required to demonstrate to the Commission only that the board of trade meets the criteria specified in subsection (b) of this section and this subsection.

(2) Deterrence of abuses

The board of trade shall establish and enforce trading and participation rules that will deter abuses and has the capacity to detect, investigate, and enforce those rules, including means to—

- (A) obtain information necessary to perform the functions required under this section; or
- (B) use technological means to—
 - (i) provide market participants with impartial access to the market; and
 - (ii) capture information that may be used in establishing whether rule violations have occurred.

(3) Trading procedures

The board of trade shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on the facilities of the board of trade. The rules may authorize—

- (A) transfer trades or office trades;
- (B) an exchange of—
 - (i) futures in connection with a cash commodity transaction;
 - (ii) futures for cash commodities; or
 - (iii) futures for swaps; or

- (C) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the registered derivatives transaction execu-

tion facility or a derivatives clearing organization.

(4) Financial integrity of transactions

The board of trade shall establish and enforce rules or terms and conditions providing for the financial integrity of transactions entered on or through the facilities of the board of trade, and rules or terms and conditions to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

(d) Core principles for registered derivatives transaction execution facilities

(1) In general

To maintain the registration of a board of trade as a derivatives transaction execution facility, a board of trade shall comply with the core principles specified in this subsection. The board of trade shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles.

(2) Compliance with rules

The board of trade shall monitor and enforce the rules of the facility, including any terms and conditions of any contracts traded on or through the facility and any limitations on access to the facility.

(3) Monitoring of trading

The board of trade shall monitor trading in the contracts of the facility to ensure orderly trading in the contract and to maintain an orderly market while providing any necessary trading information to the Commission to allow the Commission to discharge the responsibilities of the Commission under the¹ chapter.

(4) Disclosure of general information

The board of trade shall disclose publicly and to the Commission information concerning—

- (A) contract terms and conditions;
- (B) trading conventions, mechanisms, and practices;
- (C) financial integrity protections; and
- (D) other information relevant to participation in trading on the facility.

(5) Daily publication of trading information

The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for contracts traded on the facility if the Commission determines that the contracts perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.

(6) Fitness standards

The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members, and any other persons with direct access to the facility, including any parties affiliated with any of the persons described in this paragraph.

(7) Conflicts of interest

The board of trade shall establish and enforce rules to minimize conflicts of interest in the decision making process of the derivatives transaction execution facility and establish a process for resolving such conflicts of interest.

(8) Recordkeeping

The board of trade shall maintain records of all activities related to the business of the derivatives transaction execution facility in a form and manner acceptable to the Commission for a period of 5 years.

(9) Antitrust considerations

Unless necessary or appropriate to achieve the purposes of this chapter, the board of trade shall endeavor to avoid—

- (A) adopting any rules or taking any actions that result in any unreasonable restraint of trade; or
- (B) imposing any material anticompetitive burden on trading on the derivatives transaction execution facility.

(e) Use of broker-dealers, depository institutions, and farm credit system institutions as intermediaries

(1) In general

With respect to transactions other than transactions in security futures products, a registered derivatives transaction execution facility may by rule allow a broker-dealer, depository institution, or institution of the Farm Credit System that meets the requirements of paragraph (2) to—

- (A) act as an intermediary in transactions executed on the facility on behalf of customers of the broker-dealer, depository institution, or institution of the Farm Credit System; and
- (B) receive funds of customers to serve as margin or security for the transactions.

(2) Requirements

The requirements referred to in paragraph (1) are that—

- (A) the broker-dealer be in good standing with the Securities and Exchange Commission, or the depository institution or institution of the Farm Credit System be in good standing with Federal bank regulatory agencies (including the Farm Credit Administration), as applicable; and
- (B) if the broker-dealer, depository institution, or institution of the Farm Credit System carries or holds customer accounts or funds for transactions on the derivatives transaction execution facility for more than 1 business day, the broker-dealer, depository institution, or institution of the Farm Credit System is registered as a futures commission merchant and is a member of a registered futures association.

(3) Implementation

The Commission shall cooperate and coordinate with the Securities and Exchange Commission, the Secretary of the Treasury, and Federal banking regulatory agencies (including the Farm Credit Administration) in adopting rules and taking any other appropriate ac-

¹ So in original. Probably should be "this".

tion to facilitate the implementation of this subsection.

(f) Segregation of customer funds

Not later than 180 days after December 21, 2000, consistent with regulations adopted by the Commission, a registered derivatives transaction execution facility may authorize a futures commission merchant to offer any customer of the futures commission merchant that is an eligible contract participant the right to not segregate the customer funds of the customer that are carried with the futures commission merchant for purposes of trading on or through the facilities of the registered derivatives transaction execution facility.

(g) Election to trade excluded and exempt commodities

(1) In general

Notwithstanding subsection (b)(2) of this section, a board of trade that is or elects to become a registered derivatives transaction execution facility may trade on the facility any agreements, contracts, or transactions involving excluded or exempt commodities other than securities, except contracts of sale for future delivery of exempt securities under section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)] as in effect on January 11, 1983, that are otherwise excluded from this chapter under section 2(c), 2(d), or 2(g) of this title, or exempt under section 2(h) of this title.

(2) Exclusive jurisdiction of the Commission

The Commission shall have exclusive jurisdiction over agreements, contracts, or transactions described in paragraph (1) to the extent that the agreements, contracts, or transactions are traded on a derivatives transaction execution facility.

(Sept. 21, 1922, ch. 369, §5a, as added Pub. L. 106-554, §1(a)(5) [title I, §111], Dec. 21, 2000, 114 Stat. 2763, 2763A-387.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (b)(2)(D)(ii), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

PRIOR PROVISIONS

A prior section 7a, act Sept. 21, 1922, ch. 369, §5a, as added June 15, 1936, ch. 545, §7, 49 Stat. 1497; amended Pub. L. 90-258, §12, Feb. 19, 1968, 82 Stat. 29; Pub. L. 93-463, title I, §103(a), (e), (f), title II, §§208-210, title IV, §§406, 407, Oct. 23, 1974, 88 Stat. 1392, 1400, 1401, 1413; Pub. L. 95-405, §§11, 12, Sept. 30, 1978, 92 Stat. 870, 871; Pub. L. 97-444, title II, §§216, 217(a), Jan. 11, 1983, 96 Stat. 2306, 2307; Pub. L. 99-641, title I, §110(2), Nov. 10, 1986, 100 Stat. 3561; Pub. L. 102-546, title I, §103, title II, §§201(a), 206(a)(1), 213(a), 217, 222(a), Oct. 28, 1992, 106 Stat. 3594, 3595, 3601, 3609, 3611, 3615, related to duties of contract markets prior to repeal by Pub. L. 106-554, §1(a)(5) [title I, §110(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-384.

§ 7a-1. Derivatives clearing organizations

(a) Registration requirement

It shall be unlawful for a derivatives clearing organization, unless registered with the Com-

mission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(9) of this title with respect to a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option—

(1) is excluded from this chapter by section 2(a)(1)(C)(i), 2(c), 2(d), 2(f), or 2(g) of this title or sections 27 to 27f of this title, or exempted under section 2(h) or 6(c) of this title; or

(2) is a security futures product cleared by a clearing agency registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

(b) Voluntary registration

A derivatives clearing organization that clears agreements, contracts, or transactions excluded from this chapter by section 2(c), 2(d), 2(f), or 2(g) of this title or sections 27 to 27f of this title, or exempted under section 2(h) or 6(c) of this title, or other over-the-counter derivative instruments (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991) may register with the Commission as a derivatives clearing organization.

(c) Registration of derivatives clearing organizations

(1) Application

A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval under paragraph (2).

(2) Core principles

(A) In general

To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph. The applicant shall have reasonable discretion in establishing the manner in which it complies with the core principles.

(B) Financial resources

The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization.

(C) Participant and product eligibility

The applicant shall establish—

(i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and

(ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

(D) Risk management

The applicant shall have the ability to manage the risks associated with discharg-

ing the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

(E) Settlement procedures

The applicant shall have the ability to—

- (i) complete settlements on a timely basis under varying circumstances;
- (ii) maintain an adequate record of the flow of funds associated with each transaction that the applicant clears; and
- (iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

(F) Treatment of funds

The applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds.

(G) Default rules and procedures

The applicant shall have rules and procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization.

(H) Rule enforcement

The applicant shall—

- (i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the applicant and for resolution of disputes; and
- (ii) have the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations of rules of the applicant.

(I) System safeguards

The applicant shall demonstrate that the applicant—

- (i) has established and will maintain a program of oversight and risk analysis to ensure that the automated systems of the applicant function properly and have adequate capacity and security; and
- (ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test backup facilities sufficient to ensure daily processing, clearing, and settlement of transactions.

(J) Reporting

The applicant shall provide to the Commission all information necessary for the Commission to conduct the oversight function of the applicant with respect to the activities of the derivatives clearing organization.

(K) Recordkeeping

The applicant shall maintain records of all activities related to the business of the applicant as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.

(L) Public information

The applicant shall make information concerning the rules and operating procedures

governing the clearing and settlement systems (including default procedures) available to market participants.

(M) Information-sharing

The applicant shall—

- (i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and
- (ii) use relevant information obtained from the agreements in carrying out the clearing organization's risk management program.

(N) Antitrust considerations

Unless appropriate to achieve the purposes of this chapter, the derivatives clearing organization shall avoid—

- (i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or
- (ii) imposing any material anticompetitive burden on trading on the contract market.

(3) Orders concerning competition

A derivatives clearing organization may request the Commission to issue an order concerning whether a rule or practice of the applicant is the least anticompetitive means of achieving the objectives, purposes, and policies of this chapter.

(d) Existing derivatives clearing organizations

A derivatives clearing organization shall be deemed to be registered under this section to the extent that the derivatives clearing organization clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before December 21, 2000.

(e) Appointment of trustee

(1) In general

If a proceeding under section 7b of this title results in the suspension or revocation of the registration of a derivatives clearing organization, or if a derivatives clearing organization withdraws from registration, the Commission, on notice to the derivatives clearing organization, may apply to the appropriate United States district court where the derivatives clearing organization is located for the appointment of a trustee.

(2) Assumption of jurisdiction

If the Commission applies for appointment of a trustee under paragraph (1)—

(A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets of the derivatives clearing organization, wherever located; and

(B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the derivatives clearing organization in an orderly manner for the protection of participants, subject to

such terms and conditions as the court may prescribe.

(f) Linking of regulated clearing facilities

(1) In general

The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this chapter with other regulated clearance facilities for the coordinated settlement of cleared transactions.

(2) Coordination

In carrying out paragraph (1), the Commission shall coordinate with the Federal banking agencies and the Securities and Exchange Commission.

(Sept. 21, 1922, ch. 369, §5b, as added Pub. L. 106-554, §1(a)(5) [title I, §112(f)], Dec. 21, 2000, 114 Stat. 2763, 2763A-396.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (a)(2), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (b), is Pub. L. 102-242, Dec. 19, 1991, 105 Stat. 2236, as amended. For definition of over-the-counter derivative instrument, see section 4421 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of Title 12 and Tables.

PRIOR PROVISIONS

A prior section 5b of act Sept. 21, 1922, was renumbered section 5e, and is classified to section 7b of this title.

§ 7a-2. Common provisions applicable to registered entities

(a) Acceptable business practices under core principles

(1) In general

Consistent with the purposes of this chapter, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of sections 7(d), 7a(d), and 7a-1(d)(2)¹ of this title to describe what would constitute an acceptable business practice under such sections.

(2) Effect of interpretation

An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with such sections.

(b) Delegation of functions under core principles

(1) In general

A contract market or derivatives transaction execution facility may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity.

(2) Responsibility

A contract market or derivatives transaction execution facility that delegates a

function under paragraph (1) shall remain responsible for carrying out the function.

(3) Noncompliance

If a contract market or derivatives transaction execution facility that delegates a function under paragraph (1) becomes aware that a delegated function is not being performed as required under this chapter, the contract market or derivatives transaction execution facility shall promptly take steps to address the noncompliance.

(c) New contracts, new rules, and rule amendments

(1) In general

Subject to paragraph (2), a registered entity may elect to list for trading or accept for clearing any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this chapter (including regulations under this chapter).

(2) Prior approval

(A) In general

A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

(B) Prior approval required

Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(4) of this title (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

(C) Deadline

If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

(3) Approval

The Commission shall approve any such new contract or instrument, new rule, or rule amendment unless the Commission finds that the new contract or instrument, new rule, or rule amendment would violate this chapter.

(d) Violation of core principles

(1) In general

If the Commission determines, on the basis of substantial evidence, that a registered en-

¹ So in original. Reference to section 7a-1(d)(2) probably should be a reference to section 7a-1(c)(2).

tity is violating any applicable core principle specified in section 7(d), 7a(d), or 7a-1(d)(2)¹ of this title, the Commission shall—

(A) notify the registered entity in writing of the determination; and

(B) afford the registered entity an opportunity to make appropriate changes to bring the registered entity into compliance with the core principles.

(2) Failure to make changes

If, not later than 30 days after receiving a notification under paragraph (1), a registered entity fails to make changes that, in the opinion of the Commission, are necessary to comply with the core principles, the Commission may take further action in accordance with this chapter.

(e) Reservation of emergency authority

Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 12a(9) of this title.

(f) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, each designated contract market and registered derivatives transaction execution facility shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 6f(a) of this title (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 78o(b) of title 15 (except paragraph (11) thereof) with respect to the application of—

(1) rules of such designated contract market or registered derivatives transaction execution facility of the type specified in section 6d(3) of this title involving security futures products; and

(2) similar rules of national securities associations registered pursuant to section 78o-3(a) of title 15 and national securities exchanges registered pursuant to section 78f(g) of title 15 involving security futures products.

(Sept. 21, 1922, ch. 369, §5c, as added and amended Pub. L. 106-554, §1(a)(5) [title I, §113, title II, §251(h)], Dec. 21, 2000, 114 Stat. 2763, 2763A-399, 2763A-444.)

AMENDMENTS

2000—Subsec. (f). Pub. L. 106-554, §1(a)(5) [title II, §251(h)], added subsec. (f).

§ 7a-3. Exempt boards of trade

(a) Election to register with the Commission

A board of trade that meets the requirements of subsection (b) of this section may operate as an exempt board of trade on receipt from the board of trade of a notice, provided in such manner as the Commission may by rule or regulation prescribe, that the board of trade elects to operate as an exempt board of trade. Except as otherwise provided in this section, no provision of this chapter (other than subparagraphs (C) and (D) of sections 2(a)(1) and 16(e)(2)(B) of this title) shall apply with respect to a contract of sale of a commodity for future delivery (or op-

tion on such a contract) traded on or through the facilities of an exempt board of trade.

(b) Criteria for exemption

To qualify for an exemption under subsection (a) of this section, a board of trade shall limit trading on or through the facilities of the board of trade to contracts of sale of a commodity for future delivery (or options on such contracts or on a commodity)—

(1) for which the underlying commodity has—

(A) a nearly inexhaustible deliverable supply;

(B) a deliverable supply that is sufficiently large, and a cash market sufficiently liquid, to render any contract traded on the commodity highly unlikely to be susceptible to the threat of manipulation; or

(C) no cash market;

(2) that are entered into only between persons that are eligible contract participants at the time at which the persons enter into the contract; and

(3) that are not contracts of sale (or options on such a contract or on a commodity) for future delivery of any security, including any group or index of securities or any interest in, or based on the value of, any security or any group or index of securities.

(c) Antimanipulation requirements

A party to a contract of sale of a commodity for future delivery (or option on such a contract or on a commodity) that is traded on an exempt board of trade shall be subject to sections 6b, 6c(b), 6o, 9, 15, and 13(a)(2) of this title, and the Commission shall enforce those provisions with respect to any such trading.

(d) Price discovery

If the Commission finds that an exempt board of trade is a significant source of price discovery for transactions in the cash market for the commodity underlying any contract, agreement, or transaction traded on or through the facilities of the board of trade, the board of trade shall disseminate publicly on a daily basis trading volume, opening and closing price ranges, open interest, and other trading data as appropriate to the market.

(e) Jurisdiction

The Commission shall have exclusive jurisdiction over any account, agreement, contract, or transaction involving a contract of sale of a commodity for future delivery, or option on such a contract or on a commodity, to the extent that the account, agreement, contract, or transaction is traded on an exempt board of trade.

(f) Subsidiaries

A board of trade that is designated as a contract market or registered as a derivatives transaction execution facility may operate an exempt board of trade by establishing a separate subsidiary or other legal entity and otherwise satisfying the requirements of this section.

(g) Misrepresentation of status

An exempt board of trade that meets the requirements of subsection (b) of this section shall

not represent to any person that the board of trade is registered with, or designated, recognized, licensed, or approved by the Commission.

(Sept. 21, 1922, ch. 369, §5d, as added Pub. L. 106-554, §1(a)(5) [title I, §114], Dec. 21, 2000, 114 Stat. 2763, 2763A-401.)

§ 7b. Suspension or revocation of designation as registered entity

The failure of a registered entity to comply with any provision of this chapter, or any regulation or order of the Commission under this chapter, shall be cause for the suspension of the registered entity for a period not to exceed 180 days, or revocation of designation as a registered entity in accordance with the procedures and subject to the judicial review provided in section 8(b) of this title.

(Sept. 21, 1922, ch. 369, §5e, formerly §5b, as added June 15, 1936, ch. 545, §7, 49 Stat. 1498; amended Pub. L. 90-258, §13, Feb. 19, 1968, 82 Stat. 30; Pub. L. 93-463, title I, §103(a), (b), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 102-546, title II, §209(b)(3), Oct. 28, 1992, 106 Stat. 3607; renumbered §5e and amended Pub. L. 106-554, §1(a)(5) [title I, §§110(1), 115], Dec. 21, 2000, 114 Stat. 2763, 2763A-384, 2763A-402.)

AMENDMENTS

2000—Pub. L. 106-554, §1(a)(5) [title I, §115], amended section generally. Prior to amendment, section read as follows: “The failure or refusal of any board of trade to comply with any of the provisions of this chapter, or any of the rules, regulations, or orders of the Commission or the commission thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a ‘contract market’ in accordance with the procedure and subject to the judicial review provided in section 8(b) of this title.”

1992—Pub. L. 102-546 substituted reference to section 8(b) of this title for reference to section 8 of this title.

1974—Pub. L. 93-463, §103(a), provided for substitution of “Commission” for “Secretary of Agriculture” except where such words would be stricken by section 103(b), which directed striking the words “the Secretary of Agriculture or” where they appeared in the phrase “the Secretary of Agriculture or the Commission”. Because the word “commission” was not capitalized in the text of this section, section 103(b) did not apply to this section and therefore section 103(a) was executed, resulting in the substitution of “the Commission or the commission” for “the Secretary of Agriculture or the commission”.

1968—Pub. L. 90-258 substituted “rules, regulations, or orders of the Secretary of Agriculture or the commission” for “rules and regulations of the Secretary of Agriculture”.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 7b-1. Designation of securities exchanges and associations as contract markets

(a) Any board of trade that is registered with the Securities and Exchange Commission as a national securities exchange, is a national securities association registered pursuant to section 78o-3(a) of title 15, or is an alternative trading system shall be a designated contract market in security futures products if—

(1) such national securities exchange, national securities association, or alternative trading system lists or trades no other contracts of sale for future delivery, except for security futures products;

(2) such national securities exchange, national securities association, or alternative trading system files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of customers; and

(3) the registration of such national securities exchange, national securities association, or alternative trading system is not suspended pursuant to an order by the Securities and Exchange Commission.

Such designation shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission.

(b)(1) A national securities exchange, national securities association, or alternative trading system that is designated as a contract market pursuant to this section shall be exempt from the following provisions of this chapter and the rules thereunder:

(A) Subsections (c), (e), and (g) of section 6c of this title.

(B) Section 6j of this title.

(C) Section 7 of this title.

(D) Section 7a-2 of this title.

(E) Section 10a of this title.

(F) Section 12(d) of this title.

(G) Section 13(f) of this title.

(H) Section 20 of this title.

(2) An alternative trading system that is a designated contract market under this section shall be required to be a member of a futures association registered under section 21 of this title and shall be exempt from any provision of this chapter that would require such alternative trading system to—

(A) set rules governing the conduct of subscribers other than the conduct of such subscribers’ trading on such alternative trading system; or

(B) discipline subscribers other than by exclusion from trading.

(3) To the extent that an alternative trading system is exempt from any provision of this chapter pursuant to paragraph (2) of this subsection, the futures association registered under section 21 of this title of which the alternative trading system is a member shall set rules governing the conduct of subscribers to the alternative trading system and discipline the subscribers.

(4)(A) Except as provided in subparagraph (B), but notwithstanding any other provision of this

chapter, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any designated contract market in security futures subject to the designation requirement of this section from any provision of this chapter or of any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

(B) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section is granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

(C) An alternative trading system shall not be deemed to be an exchange for any purpose as a result of the designation of such alternative trading system as a contract market under this section.

(Sept. 21, 1922, ch. 369, §5f, as added Pub. L. 106-554, §1(a)(5) [title II, §252(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-445.)

§ 7b-2. Privacy

(a) Treatment as financial institutions

Notwithstanding section 509(3)(B) of the Gramm-Leach-Bliley Act [15 U.S.C. 6809(3)(B)], any futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker that is subject to the jurisdiction of the Commission under this chapter with respect to any financial activity shall be treated as a financial institution for purposes of title V of such Act [15 U.S.C. 6801 et seq.] with respect to such financial activity.

(b) Treatment of CFTC as Federal functional regulator

For purposes of title V of such Act [15 U.S.C. 6801 et seq.], the Commission shall be treated as a Federal functional regulator within the meaning of section 509(2) of such Act [15 U.S.C. 6809(2)] and shall prescribe regulations under such title within 6 months after December 21, 2000.

(Sept. 21, 1922, ch. 369, §5g, as added Pub. L. 106-554, §1(a)(5) [title I, §124], Dec. 21, 2000, 114 Stat. 2763, 2763A-411.)

REFERENCES IN TEXT

The Gramm-Leach-Bliley Act, referred to in text, is Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1338. Title V of the Act is classified principally to chapter 94 (§6801 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

§ 8. Application for designation as contract market or derivatives transaction execution facility; time; suspension or revocation of designation; hearing; review by court of appeals

(a) Any person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for the designation or registration and accompany the same with a showing that it complies with the conditions set forth in this chapter, and with a sufficient as-

surance that it will continue to comply with the the¹ requirements of this chapter. The Commission shall approve or deny an application for designation or registration as a contract market or derivatives transaction execution facility within 180 days of the filing of the application. If the Commission notifies the person that its application is materially incomplete and specifies the deficiencies in the application, the running of the 180-day period shall be stayed from the time of such notification until the application is resubmitted in completed form: *Provided*, That the Commission shall have not less than sixty days to approve or deny the application from the time the application is resubmitted in completed form. If the Commission denies an application, it shall specify the grounds for the denial. In the event of a refusal to designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, the person shall be afforded an opportunity for a hearing on the record before the Commission, with the right to appeal an adverse decision after such hearing to the court of appeals as provided for in other cases in subsection (b) of this section.

(b) The Commission is authorized to suspend for a period not to exceed six months or to revoke the designation or registration of any contract market or derivatives transaction execution facility on a showing that such contract market or derivatives transaction execution facility is not enforcing or has not enforced its rules of government made a condition of its designation or registration as set forth in sections 7 through 7a-1 of this title or section 7b-1 of this title or that such contract market or derivatives transaction execution facility, or any director, officer, agent, or employee thereof, otherwise is violating or has violated any of the provisions of this chapter or any of the rules, regulations, or orders of the Commission or the Commission² thereunder. Such suspension or revocation shall only be after a notice to the officers of the contract market or derivatives transaction execution facility affected and upon a hearing on the record: *Provided*, That such suspension or revocation shall be final and conclusive, unless within fifteen days after such suspension or revocation by the Commission such person appeals to the court of appeals for the circuit in which it has its principal place of business, by filing with the clerk of such court a written petition praying that the order of the Commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such person will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to the Commission and file in the court the record in such proceedings, as provided in section 2112 of title 28. The testimony and evidence taken or submitted before the Commission, duly filed as aforesaid as a part of the record, shall be considered by the court of appeals as the evi-

¹ So in original.

² So in original. The words "or the Commission" probably should not appear.

dence in the case. Such a court may affirm or set aside the order of the Commission or may direct it to modify its order. No such order of the Commission shall be modified or set aside by the court of appeals unless it is shown by the person that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such person for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of the Commission.

(Sept. 21, 1922, ch. 369, §6(a), (b), formerly §6(a), 42 Stat. 1001; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §7(a), Aug. 28, 1958, 72 Stat. 944; Pub. L. 90-258, §§14, 15, Feb. 19, 1968, 82 Stat. 30; Pub. L. 93-463, title I, §103(a)-(c), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95-405, §13(1), (2), Sept. 30, 1978, 92 Stat. 871; Pub. L. 97-444, title II, §218, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 98-620, title IV, §402(3), Nov. 8, 1984, 98 Stat. 3357; renumbered §6(a), (b) and amended Pub. L. 102-546, title II, §209(a)(1)-(3), title IV, §402(1)(B), (9)(A), Oct. 28, 1992, 106 Stat. 3606, 3624, 3625; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(A), (B)], Dec. 21, 2000, 114 Stat. 2763, 2763A-408.)

CODIFICATION

Section is comprised of subsecs. (a) and (b) of section 6 of act Sept. 21, 1922. Subsec. (c) of section 6 is classified to sections 9 and 15 of this title. Subsecs. (d), (e), (f), and (g) of section 6 are classified to sections 13b, 9a, 9b, and 9c of this title, respectively.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(A)(iv)], substituted “designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, the person” for “designate as a ‘contract market’ any board of trade that has made application therefor, such board of trade” in last sentence.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(A)(iii)], in third sentence, substituted “person” for “board of trade” and “180-day period” for “one-year period”.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(A)(ii)], substituted “designation or registration as a contract market or derivatives transaction execution facility within 180 days” for “designation as a contract market within one year” in second sentence.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(A)(i)], in first sentence, substituted “person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for the designation or registration” for “board of trade desiring to be designated a ‘contract market’ shall make application to the Commission for such designation”, “conditions set forth in this chapter” for “above conditions”, and “the requirements of this chapter” for “above requirements”.

Subsec. (b). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(B)(iii)], substituted “person” for “board of trade” in two places in last sentence.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(B)(ii)], in second sentence, substituted “contract market or derivatives transaction execution facility affected” for “board of trade affected”, “person appeals” for “board of trade appeals” and “person will” for “board of trade will”.

Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(B)(i)], in first sentence, substituted “designation or registration of any contract market or derivatives transaction execution facility on” for “designation of any board of trade as a ‘contract market’ upon”, “contract market or derivatives transaction execution facility” for “board of trade” in two places, and “designation or reg-

istration as set forth in sections 7 through 7a-1 of this title or section 7b-1 of this title” for “designation as set forth in section 7 of this title”.

1992—Pub. L. 102-546, §209(a)(1), (2), designated first par. as subsec. (a) and redesignated former par. (a) as subsec. (b).

Subsec. (a). Pub. L. 102-546, §209(a)(3), substituted “subsection (b)” for “paragraph (a)”.

Subsec. (b). Pub. L. 102-546, §402(9)(A), which directed amendment of first sentence by striking “the Secretary of Agriculture or”, could not be executed because of amendment by Pub. L. 93-463, §103(a). See 1974 Amendment note below.

Pub. L. 102-546, §402(1)(B), substituted “Commission” for “commission” wherever appearing.

1984—Par. (a). Pub. L. 98-620 struck out provisions requiring proceedings in such cases in the court of appeals to be made a preferred cause and expedited in every way.

1983—Pub. L. 97-444 required approval or denial of application within one year period of filing of application, stay of such period following notification that application was incomplete and deficient until resubmission of application, minimum period prior to acting upon resubmitted application, and specification of grounds for denial of application.

1978—Pub. L. 95-405, §13(1), in provisions before par. (a) inserted “on the record” after “opportunity for a hearing”.

Par. (a). Pub. L. 95-405, §13(2), inserted “on the record” after “upon a hearing”.

1974—Pub. L. 93-463, §103(a), substituted “Commission” for “Secretary of Agriculture” in first par.

Par. (a). Pub. L. 93-463, §103(c), struck out “the Secretary of Agriculture, who shall thereupon notify the other members of” after “The clerk of the court in which such a petition is filed shall immediately cause a copy thereof to be delivered to”.

Pub. L. 93-463, §103(a), provided for substitution of “Commission” for “Secretary of Agriculture” except where such words would be stricken by section 103(b), which directed striking the words “the Secretary of Agriculture or” where they appeared in the phrase “the Secretary of Agriculture or the Commission”. Because the word “commission” was not capitalized in that phrase in par. (a), section 103(b) did not apply to par. (a) and therefore section 103(a) was executed, resulting in the substitution of “the Commission or the commission” for “the Secretary of Agriculture or the commission”.

1968—Pub. L. 90-258, §14, inserted provision affording any board of trade refused a contract market designation a hearing before the Commission with right to appeal in adverse decision to the court of appeals as provided for in par. (a) of this section at end of first par.

Par. (a). Pub. L. 90-258, §15, amended par. (a) generally, striking out such parts both of first sentence and of proviso of last sentence as described the commission as made up of the Secretary of Agriculture, Secretary of Commerce, and Attorney General (covered in definition of “Commission” in section 2 of this title, including representation of such officials by their designees), extending grounds for suspension or revocation of designation to include violations of any provisions of this chapter or rules, regulations, or orders of the Secretary of Agriculture or commission, requiring delivery of appeal petitions to Secretary of Agriculture rather than any member of the commission, who would notify the other members, and filing of commission records of proceedings on appeal by the Secretary of Agriculture and not the commission, striking out provisions describing Secretary of Agriculture as Chairman (now found in section 2 of this title), superseding such part of proviso of seventh sentence as authorized appeals to the commission from Secretary of Agriculture’s refusal of a contract market designation by provisions of first par. of this section, and striking out such other part as made decision of court on appeal from commission final and binding on the parties.

1958—Pub. L. 85-791 substituted “thereupon file in the court the record in such proceedings, as provided in

section 2112 of title 28” for “forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings including the notice to the board of trade, a copy of the charges, the evidence, and the report and order” in third notice, and struck out “certified and” after “duly” in fourth sentence.

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted “court of appeals” for “circuit court of appeals” wherever appearing in this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

§ 9. Exclusion of persons from privilege of “registered entities”; procedure for exclusion; review by court of appeals

If the Commission has reason to believe that any person (other than a registered entity) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or has willfully made any false or misleading statement of a material fact in any registration application or any report filed with the Commission under this chapter, or willfully omitted to state in any such application or report any material fact which is required to be stated therein, or otherwise is violating or has violated any of the provisions of this chapter or of the rules, regulations, or orders of the Commission or the Commission¹ thereunder, it may serve upon such person a complaint stating its charges in that respect, which complaint shall have attached or shall contain therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made prohibiting him from trading on or subject to the rules of any registered entity, and directing that all registered entities refuse all privileges to such person, until further notice of the Commission, and to show cause why the registration of such person, if registered with the Commission in any capacity, should not be sus-

pended or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the Commission, or before an Administrative Law Judge designated by the Commission, which Administrative Law Judge shall cause all evidence to be reduced to writing and forthwith transmit the same to the Commission. Upon evidence received, the Commission may (1) prohibit such person from trading on or subject to the rules of any registered entity and require all registered entities to refuse such person all trading privileges thereon for such period as may be specified in the order, (2) if such person is registered with the Commission in any capacity, suspend, for a period not to exceed six months, or revoke, the registration of such person, (3) assess such person a civil penalty of not more than the higher of \$100,000 or triple the monetary gain to such person for each such violation² and (4) require restitution to customers of damages proximately caused by violations of such persons. Notice of such order shall be sent forthwith by registered mail or by certified mail or delivered to the offending person and to the governing boards of said registered entities. After the issuance of the order by the Commission, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States court of appeals of the circuit in which the petitioner is doing business, or in the case of an order denying registration, the circuit in which the petitioner’s principal place of business listed on petitioner’s application for registration is located, a written petition, within fifteen days after the notice of such order is given to the offending person praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and thereupon the Commission shall file in the court the record theretofore made, as provided in section 2112 of title 28. Upon the filing of the petition the court shall have jurisdiction to affirm, to set aside, or modify the order of the Commission, and the findings of the Commission as to the facts, if supported by the weight of evidence, shall in like manner be conclusive.

(Sept. 21, 1922, ch. 369, §6(c), formerly §6(b), 42 Stat. 1002; June 15, 1936, ch. 545, §8(a)-(d), (h)-(j), 49 Stat. 1498, 1499; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §7(b), Aug. 28, 1958, 72 Stat. 944; Pub. L. 86-507, §1(2), June 11, 1960, 74 Stat. 200; Pub. L. 90-258, §16, Feb. 19, 1968, 82 Stat. 30; Pub. L. 93-463, title I, §103(a), (b), (e), title II, §§204(b), 205(b), 212(a)(1), (2), title IV, §408, Oct. 23, 1974, 88 Stat. 1392, 1397, 1400, 1403, 1414; Pub. L. 97-444, title II, §219, Jan. 11, 1983, 96 Stat. 2308; renumbered §6(c) and amended Pub. L. 102-546, title II, §§209(a)(1), 212(b), 223, title IV, §402(1)(C), (6), (9)(B), Oct. 28, 1992, 106 Stat. 3606, 3609, 3617, 3624, 3625; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(C)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409.)

CODIFICATION

Section is comprised of part of subsec. (c) of section 6 of act Sept. 21, 1922. A further provision of subsec. (c)

¹ So in original. The words “or the Commission” probably should not appear.

² So in original. Probably should be followed by a comma.

is contained in section 15 of this title. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsecs. (d), (e), (f), and (g) of section 6 are classified to sections 13b, 9a, 9b, and 9c of this title, respectively.

AMENDMENTS

2000—Pub. L. 106-554 substituted “registered entity” for “contract market” wherever appearing, “registered entities” for “contract markets” wherever appearing, and “privileges” for “trading privileges” in two places.

1992—Pub. L. 102-546, § 402(9)(B), which directed amendment of first sentence by striking “the Secretary of Agriculture or”, could not be executed because of amendment by Pub. L. 93-463, § 103(a). See 1974 Amendment note below.

Pub. L. 102-546, §§ 209(a)(1), 212(b), 223, 402(1)(C), (6), substituted, in first sentence, “Commission thereunder” for “commission thereunder”, in sentence beginning “Upon evidence received”, inserted “(1)”, substituted “(2) if” for “and, if”, “suspend” for “may suspend”, “(3)” for “and may”, “the higher of \$100,000 or triple the monetary gain to such person” for “\$100,000”, and inserted before period “and (4) require restitution to customers of damages proximately caused by violations of such persons”, and in sentence beginning “After the issuance”, substituted “offending person” for “offending person.”

1983—Pub. L. 97-444 struck out “as futures commission merchant or any person associated therewith as described in section 6k of this title, commodity trading advisor, commodity pool operator, or as floor broker hereunder” after “such person, if registered” and also after “such person is registered” and inserted “, or in the case of an order denying registration, the circuit in which the petitioner’s principal place of business listed on petitioner’s application for registration is located,” after “court of appeals of the circuit in which the petitioner is doing business”.

1974—Pub. L. 93-463, §§ 103(e), 204(b), 205(b), 212(a)(1), (2), 408, substituted “it” for “he”, inserted “or any person associated therewith as described in section 6k of this title,” after “futures commission merchant” wherever appearing, inserted “commodity trading advisor, commodity pool operator” before “or as floor broker” wherever appearing, inserted provision for the assessment of civil penalties of not more than \$100,000 for each violation, set a limit of fifteen days after the issuance of an order within which period the person against whom the order was issued must file with the court of appeals his petition that the order be set aside, and substituted “an Administrative Law Judge” and “Administrative Law Judge” for “a referee” and “referee”, respectively.

Pub. L. 93-463, § 103(a), provided for substitution of “Commission” for “Secretary of Agriculture” except where such words would be stricken by section 103(b), which directed striking the words “the Secretary of Agriculture or” where they appeared in the phrase “the Secretary of Agriculture or the Commission”. Section 103(a) was executed wherever the term “Secretary of Agriculture” appeared in this section including in the phrase “the Secretary of Agriculture or the commission” in the first sentence. Because the word “commission” was not capitalized in that phrase in the first sentence, section 103(b) did not apply to that phrase and therefore section 103(a) was executed, resulting in the substitution of “the Commission or the commission” for “the Secretary of Agriculture or the commission”.

1968—Pub. L. 90-258 amended first sentence generally, providing for denial of trading privileges to persons other than contract markets and suspension or revocation of registration of futures commission merchants and floor brokers, who are manipulating or have attempted to manipulate prices, for willful, material, misstatements in, or omissions from, reports or registration statements, and for violations of orders of Secretary of Agriculture or commission, and authorizing the Secretary to prohibit such persons from trading on or subject to rules of any contract market.

1960—Pub. L. 86-507 inserted “or by certified mail” after “registered mail”.

1958—Pub. L. 85-791 substituted “transmitted by the clerk of the court to the Secretary of Agriculture and thereupon the Secretary of Agriculture shall file in the court the record theretofore made, as provided in section 2112 of Title 28” for “served upon the Secretary of Agriculture by delivering such copy to him and thereupon the Secretary of Agriculture shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received” in seventh sentence, and substituted “petition” for “transcript” in eighth sentence.

1936—Act June 15, 1936, among other changes, amended section by inserting provisions relating to the service of complaints and penalties for violations of this chapter.

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted “court of appeals” for “circuit court of appeals” wherever appearing in this section.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of act June 15, 1936, set out as a note under section 1 of this title.

§ 9a. Assessment of money penalties

(1) In determining the amount of the money penalty assessed under sections 9 and 15 of this title, the Commission shall consider the appropriateness of such penalty to the gravity of the violation.

(2) Unless the person against whom a money penalty is assessed under sections 9 and 15 of this title shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for payment of such penalty that either an appeal as authorized by sections 9 and 15 of this title has been taken or payment of the full amount of the penalty then due has been made, at the end of such fifteen-day period and until such person shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made—

(A) such person shall be prohibited automatically from the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

(3) If a person against whom a money penalty is assessed under sections 9 and 15 of this title takes an appeal and if the Commission prevails or the appeal is dismissed, unless such person shows to the satisfaction of the Commission that payment of the full amount of the penalty

then due has been made by the end of thirty days from the date of entry of judgment on the appeal—

(A) such person shall be prohibited automatically from the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

If the person against whom the money penalty is assessed fails to pay such penalty after the lapse of the period allowed for appeal or after the affirmance of such penalty, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(Sept. 21, 1922, ch. 369, §6(e), formerly §6(d), as added Pub. L. 93-463, title II, §212(a)(3), Oct. 23, 1974, 88 Stat. 1403; renumbered §6(e) and amended Pub. L. 102-546, title II, §209(a)(1), (5), Oct. 28, 1992, 106 Stat. 3606; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(E)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409.)

CODIFICATION

Section is comprised of subsec. (e) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to sections 9 and 15 of this title. Subsecs. (d), (f), and (g) of section 6 are classified to sections 13b, 9b, and 9c of this title, respectively.

AMENDMENTS

2000—Pars. (2)(A), (3)(A). Pub. L. 106-554 substituted “the privileges of all registered entities” for “trading on all contract markets”.

1992—Pub. L. 102-546 amended section generally. Prior to amendment, section read as follows: “In determining the amount of the money penalty assessed under sections 9 and 15 of this title, the Commission shall consider, in the case of a person whose primary business involves the use of the commodity futures market—the appropriateness of such penalty to the size of the business of the person charged, the extent of such person’s ability to continue in business, and the gravity of the violation; and in the case of a person whose primary business does not involve the use of the commodity futures market—the appropriateness of such penalty to the net worth of the person charged, and the gravity of the violation. If the offending person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.”

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§ 9b. Rules prohibiting deceptive and other abusive telemarketing acts or practices

(1) Except as provided in paragraph (2), not later than six months after the effective date of rules promulgated by the Federal Trade Commission under section 6102(a) of title 15, the Commission shall promulgate, or require each registered futures association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by any person registered or ex-

empt from registration under this chapter in connection with such person’s business as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

(A) rules adopted by the Commission under this chapter provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 6102(a) of title 15; or

(B) such a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.

(Sept. 21, 1922, ch. 369, §6(f), as added Pub. L. 103-297, §3(e)(2), Aug. 16, 1994, 108 Stat. 1547.)

CODIFICATION

Section is comprised of subsec. (f) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to sections 9 and 15 of this title. Subsecs. (d), (e), and (g) of section 6 are classified to sections 13b, 9a, and 9c of this title, respectively.

§ 9c. Notice of investigations and enforcement actions

The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission pursuant to sections 9, 15, and 13b of this title against any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, any floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, any associated person exempt from registration pursuant to section 6k(6)¹ of this title, or any board of trade designated as a contract market pursuant to section 7b-1 of this title.

(Sept. 21, 1922, ch. 369, §6(g), as added Pub. L. 106-554, §1(a)(5) [title II, §253(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-449.)

CODIFICATION

Section is comprised of subsec. (g) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to sections 9 and 15 of this title. Subsecs. (d), (e), and (f) of section 6 are classified to sections 13b, 9a, and 9b of this title, respectively.

¹ So in original. Probably should refer to the second par. (5) of section 6k.

§ 10. Repealed. June 25, 1948, ch. 646, § 39, 62 Stat. 992, eff. Sept. 1, 1948

Section, acts Sept. 21, 1922, ch. 369, § 6(b), 42 Stat. 1001; June 15, 1936, ch. 545, § 8(k), 49 Stat. 1499, related to review by Supreme Court on certiorari. See section 1254 of Title 28, Judiciary and Judicial Procedure.

§ 10a. Cooperative associations and corporations, exclusion from board of trade; rules of board inapplicable to payment of compensation by association

(a) No board of trade which has been designated or registered as a contract market or a derivatives transaction execution facility exclude¹ from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade: *Provided, however*, That if any such association or corporation shall fail to meet its obligations with any established clearing house or clearing agency of any contract market, such association or corporation shall be ipso facto debarred from further trading on such contract market, except such trading as may be necessary to close open trades and to discharge existing contracts in accordance with the rules of such contract market applicable in such cases. Such commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said commission entered hereunder shall be reviewable by the court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in section 8(b) of this title, but such order shall not be stayed by the court pending review.

(b) No rule of any board of trade designated or registered as a contract market or a derivatives transaction execution facility shall forbid or be construed to forbid the payment of compensation on a commodity-unit basis, or otherwise, by any federated cooperative association to its regional member-associations for services rendered or to be rendered in connection with any organization work, educational activity, or procurement of patronage, provided no part of any

such compensation is returned to patrons (whether members or nonmembers) of such cooperative association, or of its regional or local member-associations, otherwise than as a dividend on capital stock or as a patronage dividend out of the net earnings or surplus of such federated cooperative association.

(Sept. 21, 1922, ch. 369, § 6a, as added June 15, 1936, ch. 545, § 9, 49 Stat. 1499; amended June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 102-546, title II, § 209(b)(4), title IV, § 402(8), Oct. 28, 1992, 106 Stat. 3607, 3625; Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(13)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(13)(A)], substituted “designated or registered as a contract market or a derivatives transaction execution facility” for “designated as a ‘contract market’ shall”.

Subsec. (b). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(13)(B)], substituted “designated or registered as a contract market or a derivatives transaction execution facility” for “designated as a contract market”.

1992—Pub. L. 102-546 redesignated subsecs. (1) and (2) as (a) and (b), respectively, and in subsec. (a) substituted reference to section 8(b) of this title for reference to section 8 of this title.

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted “court of appeals” for “circuit court of appeals” wherever appearing.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 11. Vacation on request of designation or registration as “registered entity”; redesignation or reregistration

Any person that has been designated or registered a registered entity in the manner provided in this chapter may have such designation or registration vacated and set aside by giving notice in writing to the Commission requesting that its designation or registration as a registered entity be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation or registration shall take effect. Upon receipt of such notice the Commission shall forthwith order the vacation of the designation or registration of the registered entity, effective upon the day named in the notice, and shall forthwith send a copy of the notice and its order to all other registered entities. From and after the date upon which the vacation became effective the said person can thereafter be designated or registered again a registered entity by making application to the Commission in the manner in this chapter provided for an original application.

(Sept. 21, 1922, ch. 369, § 7, 42 Stat. 1002; Pub. L. 93-463, title I, § 103(a), (e), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(17)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409.)

AMENDMENTS

2000—Pub. L. 106-554, in first sentence, substituted “person” for “board of trade”, inserted “or registered”

¹ So in original. Probably should read “shall exclude”.

after “designated”, inserted “or registration” after “designation” wherever appearing, and substituted “registered entity” for “contract market” in two places, in second sentence, substituted “designation or registration of the registered entity” for “designation of such board of trade as a contract market” and “registered entities” for “contract markets”, and, in last sentence, substituted “person” for “board of trade” and “designated or registered again a registered entity” for “designated again a contract market”.

1974—Pub. L. 93-463 substituted “Commission” for “Secretary of Agriculture” and “its order” for “his order”.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

§ 12. Public disclosure

(a) Investigations respecting operations of boards of trade and others subject to this chapter; publication of results; restrictions; information received from foreign futures authorities; undercover operations; notice of investigations and enforcement actions

(1) For the efficient execution of the provisions of this chapter, and in order to provide information for the use of Congress, the Commission may make such investigations as it deems necessary to ascertain the facts regarding the operations of boards of trade and other persons subject to the provisions of this chapter. The Commission may publish from time to time the results of any such investigation and such general statistical information gathered therefrom as it deems of interest to the public: *Provided*, That except as otherwise specifically authorized in this chapter, the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers: *Provided further*, That the Commission may withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person. The Commission shall not be compelled to disclose any information or data obtained from a foreign futures authority if—

(A) the foreign futures authority has in good faith determined and represented to the Commission that disclosure of such information or data by that foreign futures authority would violate the laws applicable to that foreign futures authority; and

(B) the Commission obtains such information pursuant to—

(i) such procedure as the Commission may authorize for use in connection with the administration or enforcement of this chapter; or

(ii) a memorandum of understanding with that foreign futures authority;

except that nothing in this subsection shall prevent the Commission from disclosing publicly any information or data obtained by the Commission from a foreign futures authority when such disclosure is made in connection with a congressional proceeding, an administrative or judicial proceeding commenced by the United States or the Commission, in any receivership proceeding commenced involving a receiver ap-

pointed in a judicial proceeding by the United States or the Commission, or in any proceeding under title 11 in which the Commission has intervened or in which the Commission has the right to appear and be heard. Nothing in this subsection shall be construed to authorize the Commission to withhold information or data from Congress. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of section 552.

(2) In conducting investigations authorized under this subsection or any other provision of this chapter, the Commission shall continue, as the Commission determines necessary, to request the assistance of and cooperate with the appropriate Federal agencies in the conduct of such investigations, including undercover operations by such agencies. The Commission and the Department of Justice shall assess the effectiveness of such undercover operations and, within two years of October 28, 1992, shall recommend to Congress any additional undercover or other authority for the Commission that the Commission or the Department of Justice believes to be necessary.

(3) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2) of this title, any floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, any associated person exempt from registration pursuant to section 6k(6)¹ of this title, or any board of trade designated as a contract market pursuant to section 7b-1 of this title.

(b) Business matters; congressional, administrative, judicial, and bankruptcy proceedings

The Commission may disclose publicly any data or information that would separately disclose the market positions, business transactions, trade secrets, or names of customers of any person when such disclosure is made in connection with a congressional proceeding, in an administrative or judicial proceeding brought under this chapter, in any receivership proceeding involving a receiver appointed in a judicial proceeding brought under this chapter, or in any bankruptcy proceeding in which the Commission has intervened or in which the Commission has the right to appear and be heard under title 11. This subsection shall not apply to the disclosure of data or information obtained by the Commission from a foreign futures authority.

(c) Reports respecting conduct of registered entities or transactions of violators; contents

The Commission may make or issue such reports as it deems necessary, or such opinions or orders as may be required under other provisions of law, relative to the conduct of any registered entity or to the transactions of any person found guilty of violating the provisions of this chapter or the rules, regulations, or orders of the Commission thereunder in proceedings

¹ So in original. Probably should refer to the second par. (5) of section 6k.

brought under sections 8, 9, 9a, 9b, 9c, 13b, and 15 of this title. In any such report or opinion, the Commission may set forth the facts as to any actual transaction or any information referred to in subsection (b) of this section, if such facts or information have previously been disclosed publicly in connection with a congressional proceeding, or in an administrative or judicial proceeding brought under this chapter.

(d) Investigations respecting marketing conditions of commodities and commodity products and byproducts; reports

The Commission, upon its own initiative or in cooperation with existing governmental agencies, shall investigate the marketing conditions of commodities and commodity products and byproducts, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. It shall also compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such other methods as it deems most effective, information respecting the commodity markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

(e) Names and addresses of traders of boards of trade previously disclosed; disclosure to Congress and agencies or departments of States or foreign governments or foreign futures authority

The Commission may disclose and make public, where such information has previously been disclosed publicly in accordance with the provisions of this section, the names and addresses of all traders on the boards of trade on the commodity markets with respect to whom the Commission has information, and any other information in the possession of the Commission relating to the amount of commodities purchased or sold by each such trader. Upon the request of any committee of either House of Congress, acting within the scope of its jurisdiction, the Commission shall furnish to such committee the names and addresses of all traders on such boards of trade with respect to whom the Commission has information, and any other information in the possession of the Commission relating to the amount of any commodity purchased or sold by each such trader. Upon the request of any department or agency of the Government of the United States, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this chapter. However, any information furnished under this subsection to any Federal department or agency shall not be disclosed by such department or agency except in any action or proceeding under the laws of the United States to which it, the Commission, or the United States is a party. Upon the request of any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction, any foreign futures authority, or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such foreign futures authority,

department or agency any information in the possession of the Commission obtained in connection with the administration of this chapter. Any information furnished to any department or agency of any State or political subdivision thereof shall not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under this chapter or the laws of such State or political subdivision to which such State or political subdivision or any department or agency thereof is a party. The Commission shall not furnish any information to a foreign futures authority or to a department or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such foreign futures authority, department or agency except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof, or foreign futures authority,² is a party.

(f) Compliance with subpoena after notice to informant; congressional subpoenas and requests for information excepted

The Commission shall disclose information in its possession pursuant to a subpoena or summons only if—

(1) a copy of the subpoena or summons has been mailed to the last known home or business address of the person who submitted the information that is the subject of the subpoena or summons, if the address is known to the Commission, or, if such mailing would be unduly burdensome, the Commission provides other appropriate notice of the subpoena or summons to such person, and

(2) at least fourteen days have expired from the date of such mailing of the subpoena or summons, or such other notice.

This subsection shall not apply to congressional subpoenas or congressional requests for information.

(g) Requests for information by State agencies or subdivisions; volunteering of information by Commission

The Commission shall provide any registration information maintained by the Commission on any registrant upon reasonable request made by any department or agency of any State or any political subdivision thereof. Whenever the Commission determines that such information may be appropriate for use by any department or agency of a State or political subdivision thereof, the Commission shall provide such information without request.

(h) Omitted

(i) Review and audits by Comptroller General

The Comptroller General of the United States shall conduct reviews and audits of the Commission and make reports thereon. For the purpose of conducting such reviews and audits, the Comptroller General shall be furnished such information regarding the powers, duties, organi-

² So in original. The period probably should be a comma.

zations, transactions, operations, and activities of the Commission as the Comptroller General may require and the Comptroller General and the duly authorized representatives of the Comptroller General shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of the Commission, except that in reports the Comptroller General shall not include data and information that would separately disclose the business transactions of any person and trade secrets or names of customers, although such data shall be provided upon request by any committee of either House of Congress acting within the scope of its jurisdiction.

(Sept. 21, 1922, ch. 369, § 8, 42 Stat. 1003; June 15, 1936, ch. 545, § 2, 49 Stat. 1491; Pub. L. 90-258, § 19(a), Feb. 19, 1968, 82 Stat. 32; Pub. L. 93-463, title I, § 103(a), (e), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 95-405, § 16, Sept. 30, 1978, 92 Stat. 873; Pub. L. 97-444, title II, § 222, Jan. 11, 1983, 96 Stat. 2309; Pub. L. 102-546, title II, § 205, title III, §§ 304, 305, title IV, § 402(7), Oct. 28, 1992, 106 Stat. 3600, 3623, 3624; Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(18), title II, § 253(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-410, 2763A-449.)

CODIFICATION

Section is based on section 8 of Act Sept. 21, 1922, as amended generally by Pub. L. 95-405, § 16. Prior to such general amendment, section was comprised of the first paragraph of section 8, and the second, third, and fourth pars. of section 8 were classified to sections 12-1, 12-2, and 12-3 of this title, respectively.

Subsection (h), which required the Commodity Futures Trading Commission to submit an annual report to Congress detailing the operations of the Commission, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 158 of House Document No. 103-7.

AMENDMENTS

2000—Subsec. (a)(3). Pub. L. 106-554, § 1(a)(5) [title II, § 253(a)], added par. (3).

Subsec. (c). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(18)], in first sentence, substituted “registered entity” for “board of trade”.

1992—Subsec. (a). Pub. L. 102-546, §§ 205, 304(1), designated existing provisions as par. (1), inserted provisions at end relating to disclosure of information received from foreign futures authorities, and added par. (2).

Subsec. (b). Pub. L. 102-546, § 304(2), inserted at end “This subsection shall not apply to the disclosure of data or information obtained by the Commission from a foreign futures authority.”

Subsec. (e). Pub. L. 102-546, § 305, inserted references to foreign futures authority in fifth and last sentences.

Subsec. (f). Pub. L. 102-546, § 402(7), substituted “subpoena” for “subpena” wherever appearing and “subpoenas” for “subpenas” in last sentence.

1983—Subsec. (a). Pub. L. 97-444, § 222(1), inserted proviso authorizing Commission to withhold from public disclosure any data or information concerning or obtained in connection with any pending investigation of any person.

Subsec. (b). Pub. L. 97-444, § 222(2), inserted references to receivership proceedings involving a receiver appointed in a judicial proceeding brought under this chapter and to bankruptcy proceedings in which the Commission has intervened or in which Commission has right to appear and be heard under title 11.

Subsec. (e). Pub. L. 97-444, § 222(3), struck out “of the Executive Branch” after “Upon the request of any department or agency” and inserted “Upon the request of

any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction, or any department or agency of any foreign government or any political subdivision thereof, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with the administration of this chapter. Any information furnished to any department or agency of any State or political subdivision thereof shall not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under this chapter or the laws of such State or political subdivision to which such State or political subdivision or any department or agency thereof is a party. The Commission shall not furnish any information to a department or agency of a foreign government or political subdivision thereof unless the Commission is satisfied that the information will not be disclosed by such department or agency except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof is a party.”

Subsecs. (f), (g). Pub. L. 97-444, § 222(5), added subsecs. (f) and (g). Former subsecs. (f) and (g) were redesignated (h) and (i), respectively.

Subsecs. (h), (i). Pub. L. 97-444, § 222(4), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1978—Pub. L. 95-405 consolidated under this section provisions formerly contained in this section and sections 12-1, 12-2, and 12-3 of this title, generally revised provisions thus consolidated to clarify and expand disclosure to public of traders and their positions on boards of trade, and divided provisions thus consolidated and revised into subsecs. (a) to (g).

1974—Pub. L. 93-463 substituted “Commission” for “Secretary of Agriculture”, “it” for “he”, “its” for “his”, and “It” for “He”.

1968—Pub. L. 90-258 authorized investigations to ascertain facts regarding operations of other persons subject to any provisions of this chapter.

1936—Act June 15, 1936, substituted “commodity” for “grain” wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of act June 15, 1936, set out as a note under section 1 of this title.

§§ 12-1 to 12-3. Omitted

CODIFICATION

Sections 12-1 to 12-3 comprised the second, third, and fourth pars., respectively, of section 8 of the Commodity Exchange Act, Sept. 21, 1922, ch. 369, § 8, 42 Stat. 1003. Such section 8 was amended generally by Pub. L.

95-405, § 16, Sept. 30, 1978, 92 Stat. 873, and is classified in its entirety to section 12 of this title.

Section 12-1, as added Dec. 19, 1947, ch. 523, 61 Stat. 941; amended Feb. 19, 1968, Pub. L. 90-258, § 19(b), 82 Stat. 32; Oct. 23, 1974, Pub. L. 93-463, title I, § 103(a), (e), (f), 88 Stat. 1392, related to disclosure of names of traders on commodity markets by Commission. See section 12(e) of this title.

Section 12-2, as added Oct. 23, 1974, Pub. L. 93-463, title I, § 105, 88 Stat. 1392, required an annual report to Congress. See Codification note under section 12 of this title.

Section 12-3, as added Oct. 23, 1974, Pub. L. 93-463, title I, § 105, 88 Stat. 1392, related to reviews and audits by Comptroller General. See section 12(i) of this title.

§ 12a. Registration of commodity dealers and associated persons; regulation of registered entities

The Commission is authorized—

(1) to register futures commission merchants, associated persons of futures commission merchants, introducing brokers, associated persons of introducing brokers, commodity trading advisors, associated persons of commodity trading advisors, commodity pool operators, associated persons of commodity pool operators, floor brokers, and floor traders upon application in accordance with rules and regulations and in the form and manner to be prescribed by the Commission, which may require the applicant, and such persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing, and in connection therewith to fix and establish from time to time reasonable fees and charges for registrations and renewals thereof: *Provided*, That notwithstanding any provision of this chapter, the Commission may grant a temporary license to any applicant for registration with the Commission pursuant to such rules, regulations, or orders as the Commission may adopt, except that the term of any such temporary license shall not exceed six months from the date of its issuance;

(2) upon notice, but without a hearing and pursuant to such rules, regulations, or orders as the Commission may adopt, to refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of, any person and with such a hearing as may be appropriate to revoke the registration of any person—

(A) if a prior registration of such person in any capacity has been suspended (and the period of such suspension has not expired) or has been revoked;

(B) if registration of such person in any capacity has been refused under the provisions of paragraph (3) of this section within five years preceding the filing of the application for registration or at any time thereafter;

(C) if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction (except that registration may not be revoked solely on the basis of such temporary order, judgment, or decree), including an order entered pursuant to an agreement of

settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing any activity where such activity involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, gambling, or any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 6c or 23 of this title, or concerning securities;

(D) if such person has been convicted within ten years preceding the filing of the application for registration or at any time thereafter of any felony that (i) involves any transactions or advice concerning any contract of sale of a commodity for future delivery, or any activity subject to Commission regulation under section 6c or 23 of this title, or concerning a security, (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (iv) involves the violation of section 152, 1001, 1341, 1342, 1343, 1503, 1623, 1961, 1962, 1963, or 2314, or chapter 25, 47, 95, or 96 of title 18, or section 7201 or 7206 of title 26;

(E) if such person, within ten years preceding the filing of the application or at any time thereafter, has been found in a proceeding brought by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this chapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Public Utility Holding Company Act of 1935,¹ the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], the Investment

¹ See References in Text note below.

Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Securities Investors² Protection Act of 1970 [15 U.S.C. 78aaa et seq.], the Foreign Corrupt Practices Act of 1977, chapter 96 of title 18, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rule-making Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

(F) if such person is subject to an outstanding order of the Commission denying privileges on any registered entity to such person, denying, suspending, or revoking such person's membership in any registered entity or registered futures association, or barring or suspending such person from being associated with a registrant under this chapter or with a member of a registered entity or with a member of a registered futures association;

(G) if, as to any of the matters set forth in this paragraph and paragraph (3), such person willfully made any materially false or misleading statement or omitted to state any material fact in such person's application or any update thereto; or

(H) if refusal, suspension, or revocation of the registration of any principal of such person would be warranted because of a statutory disqualification listed in this paragraph:

Provided, That such person may appeal from a decision to refuse registration, condition registration, suspend, revoke or to place restrictions upon registration made pursuant to the provisions of this paragraph in the manner provided in sections 9 and 15 of this title; and *Provided, further*, That for the purposes of paragraphs (2) and (3) of this section, "principal" shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director, or beneficial owner of at least 10 per centum of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission;

(3) to refuse to register or to register conditionally any person, if it is found, after opportunity for hearing, that—

(A) such person has been found by the Commission or by any court of competent jurisdiction to have violated, or has consented to findings of a violation of, any provision of this chapter, or any rule, regulation, or order thereunder (other than a violation set forth in paragraph (2) of this section), or to have willfully aided, abetted,

counseled, commanded, induced, or procured the violation by any other person of any such provision;

(B) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Public Utility Holding Company Act of 1935,¹ the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.], the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Securities Investors³ Protection Act of 1970 [15 U.S.C. 78aaa et seq.], the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;

(C) such person failed reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this chapter, or of any of the statutes set forth in subparagraph (B) of this paragraph, or of any of the rules, regulations, or orders thereunder, and the person subject to supervision committed such a violation: *Provided*, That no person shall be deemed to have failed reasonably to supervise another person, within the meaning of this subparagraph if (i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person and (ii) such person has reasonably discharged the duties and obligations incumbent upon that person, as supervisor, by reason of such procedures and system, without reasonable cause to believe that such procedures and system were not being complied with;

(D) such person pleaded guilty to or was convicted of a felony other than a felony of the type specified in paragraph (2)(D) of this section, or was convicted of a felony of the type specified in paragraph (2)(D) of this section more than ten years preceding the filing of the application;

(E) such person pleaded guilty to or was convicted of any misdemeanor which (i) involves any transaction or advice concerning any contract of sale of a commodity for future delivery or any activity subject to Commission regulation under section 6c or 23 of this title or concerning a security, (ii) arises out of the conduct of the business of a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant

² So in original. Probably should be "Investor".

³ So in original. Probably should be "Investor".

under this chapter, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or an affiliated person or employee of any of the foregoing, (iii) involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, (iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25, 47, 95, or 96 of title 18, or section 7203, 7204, 7205, or 7207 of title 26;

(F) such person was debarred by any agency of the United States from contracting with the United States;

(G) such person willfully made any materially false or misleading statement or willfully omitted to state any material fact in such person's application or any update thereto, in any report required to be filed with the Commission by this chapter or the regulations thereunder, in any proceeding before the Commission or in any registration disqualification proceeding;

(H) such person has pleaded nolo contendere to criminal charges of felonious conduct, or has been convicted in a State court, in a United States military court, or in a foreign court of conduct which would constitute a felony under Federal law if the offense had been committed under Federal jurisdiction;

(I) in the case of an applicant for registration in any capacity for which there are minimum financial requirements prescribed under this chapter or under the rules or regulations of the Commission, such person has not established that such person meets such minimum financial requirements;

(J) such person is subject to an outstanding order denying, suspending, or expelling such person from membership in a registered entity, a registered futures association, any other self-regulatory organization, or any foreign regulatory body that the Commission recognizes as having a comparable regulatory program or barring or suspending such person from being associated with any member or members of such registered entity, association, self-regulatory organization, or foreign regulatory body;

(K) such person has been found by any court of competent jurisdiction or by any Federal or State agency or other governmental body, or by agreement of settlement to which any Federal or State agency or other governmental body is a party, (i) to have violated any statute or any rule, regulation, or order thereunder which involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling or (ii) to have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person;

(L) such person has associated with such person any other person and knows, or in the exercise of reasonable care should know, of

facts regarding such other person that are set forth as statutory disqualifications in paragraph (2) of this section, unless such person has notified the Commission of such facts and the Commission has determined that such other person should be registered or temporarily licensed;

(M) there is other good cause; or

(N) any principal, as defined in paragraph (2) of this section, of such person has been or could be refused registration:

Provided, That pending final determination under this paragraph, registration shall not be granted: *Provided further*, That such person may appeal from a decision to refuse registration or to condition registration made pursuant to this paragraph in the manner provided in sections 9 and 15 of this title;

(4) in accordance with the procedure provided for in sections 9 and 15 of this title, to suspend, revoke, or place restrictions upon the registration of any person registered under this chapter if cause exists under paragraph (3) of this section which would warrant a refusal of registration of such person, and to suspend or revoke the registration of any futures commission merchant or introducing broker who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any registered entity from any person if such person has been denied trading privileges on any registered entity by order of the Commission under sections 9 and 15 of this title and the period of denial specified in such order shall not have expired: *Provided*, That such person may appeal from a decision to suspend, revoke, or place restrictions upon registration made pursuant to this paragraph in the manner provided in sections 9 and 15 of this title;

(5) to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this chapter;

(6) to communicate to the proper committee or officer of any registered entity, registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(26)], notwithstanding the provisions of section 12 of this title, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors, or which is necessary or appropriate to effectuate the purposes of this chapter: *Provided*, That any information furnished by the Commission under this paragraph shall not be disclosed by such registered entity, registered futures association, or self-regulatory organization except in any self-regulatory action or proceeding;

(7) to alter or supplement the rules of a registered entity insofar as necessary or appropriate by rule or regulation or by order, if after making the appropriate request in writing to a registered entity that such registered entity effect on its own behalf specified

changes in its rules and practices, and after appropriate notice and opportunity for hearing, the Commission determines that such registered entity has not made the changes so required, and that such changes are necessary or appropriate for the protection of persons producing, handling, processing, or consuming any commodity traded for future delivery on such registered entity, or the product or by-product thereof, or for the protection of traders or to insure fair dealing in commodities traded for future delivery on such registered entity. Such rules, regulations, or orders may specify changes with respect to such matters as—

(A) terms or conditions in contracts of sale to be executed on or subject to the rules of such registered entity;

(B) the form or manner of execution of purchases and sales for future delivery;

(C) other trading requirements, excepting the setting of levels of margin;

(D) safeguards with respect to the financial responsibility of members;

(E) the manner, method, and place of soliciting business, including the content of such solicitations; and

(F) the form and manner of handling, recording, and accounting for customers' orders, transactions, and accounts;

(8) to make and promulgate such rules and regulations with respect to those persons registered under this chapter, who are not members of a registered entity, as in the judgment of the Commission are reasonably necessary to protect the public interest and promote just and equitable principles of trade, including but not limited to the manner, method, and place of soliciting business, including the content of such solicitation;

(9) to direct the registered entity, whenever it has reason to believe that an emergency exists, to take such action as in the Commission's judgment is necessary to maintain or restore orderly trading in or liquidation of any futures contract, including, but not limited to, the setting of temporary emergency margin levels on any futures contract, and the fixing of limits that may apply to a market position acquired in good faith prior to the effective date of the Commission's action. The term "emergency" as used herein shall mean, in addition to threatened or actual market manipulations and corners, any act of the United States or a foreign government affecting a commodity or any other major market disturbance which prevents the market from accurately reflecting the forces of supply and demand for such commodity. Any action taken by the Commission under this paragraph shall be subject to review only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit. Such review shall be based upon an examination of all the information before the Commission at the time the determination was made. The court reviewing the Commission's action shall not enter a stay or order of mandamus unless it has determined, after no-

tice and hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Nothing herein shall be deemed to limit the meaning or interpretation given by a registered entity to the terms "market emergency", "emergency", or equivalent language in its own bylaws, rules, regulations, or resolutions;

(10) to authorize any person to perform any portion of the registration functions under this chapter, in accordance with rules, notwithstanding any other provision of law, adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to section 21(j) of this title, and subject to the provisions of this chapter applicable to registrations granted by the Commission; and

(11)(A) by written notice served on the person and pursuant to such rules, regulations, and orders as the Commission may adopt, to suspend or modify the registration of any person registered under this chapter who is charged (in any information, indictment, or complaint authorized by a United States attorney or an appropriate official of any State) with the commission of or participation in a crime involving a violation of this chapter, or a violation of any other provision of Federal or State law that would reflect on the honesty or the fitness of the person to act as a fiduciary (including an offense specified in subparagraph (D) or (E) of paragraph (2)) that is punishable by imprisonment for a term exceeding one year, if the Commission determines that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission.

(B) Prior to the suspension or modification of the registration of a person under this paragraph, the person shall be afforded an opportunity for a hearing at which the Commission shall have the burden of showing that the continued registration of the person does, or is likely to, pose a threat to the public interest or threaten to impair public confidence in any market regulated by the Commission.

(C) Any notice of suspension or modification issued under this paragraph shall remain in effect until such information, indictment, or complaint is disposed of or until terminated by the Commission.

(D) On disposition of such information, indictment, or complaint, the Commission may issue and serve on such person an order pursuant to paragraph (2) or (4) to suspend, restrict, or revoke the registration of such person.

(E) A finding of not guilty or other disposition of the charge shall not preclude the Commission from thereafter instituting any other proceedings under this chapter.

(F) A person aggrieved by an order issued under this paragraph may obtain review of such order in the same manner and on the same terms and conditions as are provided in section 8(b) of this title.

(Sept. 21, 1922, ch. 369, §8a, as added June 15, 1936, ch. 545, §10, 49 Stat. 1500; amended Aug. 5, 1955, ch. 574, 69 Stat. 535; Pub. L. 90-258, §§20-23,

Feb. 19, 1968, 82 Stat. 32, 33; Pub. L. 93-463, title I, § 103(a), title II, §§ 204(c), 205(c), 213-215, Oct. 23, 1974, 88 Stat. 1392, 1397, 1400, 1404; Pub. L. 95-405, § 17, Sept. 30, 1978, 92 Stat. 874; Pub. L. 97-444, title I, § 104, title II, §§ 223-225, Jan. 11, 1983, 96 Stat. 2297, 2310-2315; Pub. L. 102-546, title II, §§ 207(b)(3), (4), 208, 209(b)(6), 227, title IV, § 402(10), Oct. 28, 1992, 106 Stat. 3604, 3607, 3618, 3625; Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(19)], Dec. 21, 2000, 114 Stat. 2763, 2763A-410.]

REFERENCES IN TEXT

The Securities Act of 1933, referred to in pars. (2)(E) and (3)(B), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 77a of Title 15 and Tables.

The Securities Exchange Act of 1934, referred to in pars. (2)(E) and (3)(B), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Public Utility Holding Company Act of 1935, referred to in pars. (2)(E) and (3)(B), is title I of act Aug. 26, 1935, ch. 687, 49 Stat. 803, as amended, which was classified generally to chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 109-58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974. For complete classification of this Act to the Code, see Tables.

The Trust Indenture Act of 1939, referred to in pars. (2)(E) and (3)(B), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, as amended, which is classified generally to subchapter III (§ 77aaa et seq.) of chapter 2A of Title 15. For complete classification of this Act to the Code, see section 77aaa of Title 15 and Tables.

The Investment Advisers Act of 1940, referred to in pars. (2)(E) and (3)(B), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, as amended, which is classified generally to subchapter II (§ 80b-1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80b-20 of Title 15 and Tables.

The Investment Company Act of 1940, referred to in pars. (2)(E) and (3)(B), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a-1 et seq.) of chapter 2D of Title 15. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

The Securities Investor Protection Act of 1970, referred to in pars. (2)(E) and (3)(B), is Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636, as amended, which is classified generally to chapter 2B-1 (§ 78aaa et seq.) of Title 15. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

The Foreign Corrupt Practices Act of 1977, referred to in pars. (2)(E) and (3)(B), is title I of Pub. L. 95-213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd-1 to 78dd-3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

AMENDMENTS

2000—Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(19)(A)], substituted “registered entity” for “contract market” wherever appearing.

Par. (2)(F). Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(19)(B)], substituted “privileges” for “trading privileges”.

1992—Par. (1). Pub. L. 102-546, § 207(b)(3), substituted “floor brokers, and floor traders” for “and floor brokers”.

Par. (2). Pub. L. 102-546, § 209(b)(6)(A), made technical amendment to reference to sections 9 and 15 of this

title in concluding provisions to reflect change in reference to corresponding section of original act.

Par. (2)(C)(i). Pub. L. 102-546, § 207(b)(4), inserted “floor trader,” after “floor broker,”.

Par. (2)(C)(ii). Pub. L. 102-546, § 208(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 6c or 23 of this title, or concerning securities”.

Par. (2)(D)(ii). Pub. L. 102-546, § 207(b)(4), inserted “floor trader,” after “floor broker,”.

Par. (2)(D)(iv). Pub. L. 102-546, § 208(b), inserted references to sections 1001, 1503, 1623, 1961 to 1963, and 2314 of title 18 and sections 7201 and 7206 of title 26.

Par. (2)(E). Pub. L. 102-546, § 208(c), substituted “in a proceeding brought” for “by any court of competent jurisdiction,” and in cl. (i) inserted reference to chapter 96 of title 18.

Par. (2)(G). Pub. L. 102-546, § 208(d), substituted “this paragraph and paragraph (3)” for “subparagraphs (A) through (F) of this paragraph”, “materially false” for “material false”, and “application or any update thereto” for “application”.

Par. (3). Pub. L. 102-546, § 209(b)(6)(B), made technical amendment to reference to sections 9 and 15 of this title in concluding provisions to reflect change in reference to corresponding section of original act.

Par. (3)(D). Pub. L. 102-546, § 208(e), inserted “pleaded guilty to or” after “person”, substituted “section,” for “section within ten years preceding the filing of the application or at any time thereafter,” and “felony of the type specified in paragraph (2)(D) of this section more” for “felony, including a felony of the type specified in paragraph (2)(D) of this section, more”.

Par. (3)(E). Pub. L. 102-546, § 208(f)(1), (2), inserted “pleaded guilty to or” after “person” and struck out “within ten years preceding the filing of the application for registration or at any time thereafter” before “of any misdemeanor”.

Par. (3)(E)(ii). Pub. L. 102-546, § 207(b)(4), inserted “floor trader,” after “floor broker,”.

Par. (3)(E)(iv). Pub. L. 102-546, § 208(f)(3), inserted reference to sections 7203 to 7205 and 7207 of title 26.

Par. (3)(G). Pub. L. 102-546, § 208(g)(5), which directed the insertion of “or in any registration disqualification proceeding” after “Commission”, was executed by making the insertion after “Commission” the second time it appeared to reflect the probable intent of Congress.

Pub. L. 102-546, § 208(g)(1)-(4), substituted “materially false” for “material false”, “application or any update thereto,” for “application,” and struck out “or” after “thereunder,”.

Par. (3)(H). Pub. L. 102-546, § 208(h), inserted “, in a United States military court,” after “State court”.

Par. (3)(J). Pub. L. 102-546, § 208(i), struck out “or” before “any other self-regulatory”, inserted “or any foreign regulatory body that the Commission recognizes as having a comparable regulatory program”, and substituted “association, self-regulatory organization, or foreign regulatory body” for “association, or self-regulatory organization”.

Par. (4). Pub. L. 102-546, § 209(b)(6)(C), made technical amendment to references to sections 9 and 15 of this title in concluding provisions to reflect change in references to corresponding section of original act.

Par. (5). Pub. L. 102-546, § 402(10)(A), struck out “and” at end.

Par. (7). Pub. L. 102-546, § 402(10)(B), substituted “matters as—” for “matters as:” in introductory provisions.

Par. (11). Pub. L. 102-546, § 227, added par. (11).

1983—Par. (1). Pub. L. 97-444, § 223, substituted authorization for registration of “associated persons of futures commission merchants” for “and persons associated therewith as described in section 6k of this title”; authorized registration of introducing brokers, associated persons of introducing brokers, associated persons of commodity trading advisors and associated persons

of commodity pool operators, substituted “such persons” for “any persons” before “associated with the applicant”, and authorized establishment of registration and renewal fees and charges and granting of temporary licenses for terms not exceeding six months from date of issuance.

Par. (2). Pub. L. 97-444, §224(1), added par. (2) and struck out prior par. (2) which authorized Commission “to refuse to register any person—

“(A) if the prior registration of such person has been suspended (and the period of such suspension shall not have expired) or has been revoked;

“(B) if it is found, after opportunity for hearing, that the applicant is unfit to engage in the business for which the application for registration is made, (i) because such applicant, or, if the applicant is a partnership, any general partner, or, if the applicant is a corporation, any officer or holder of more than 10 per centum of the stock, at any time engaged in any practice of the character prohibited by this chapter or was convicted of a felony in any State or Federal court, or was debarred by any agency of the United States from contracting with the United States, or the applicant willfully made any material false or misleading statement in his application or willfully omitted to state any material fact in connection with the application, or (ii) for other good cause shown; or

“(C) in the case of an applicant for registration as futures commission merchant, if it is found after opportunity for hearing that the applicant has not established that he meets the minimum financial requirements under section 6f of this title: *Provided*, That pending final determination under subparagraph (B) or (C), registration shall not be granted: *And provided further*, That the applicant may appeal from the refusal of registration under subparagraph (B) or (C) in the manner provided in sections 9 and 15 of this title; and”.

Par. (3). Pub. L. 97-444, §224(3), added par. (3). Former par. (3) redesignated (4).

Par. (4). Pub. L. 97-444, §224(2), (4), struck out par. (4) provision for establishment of registration and renewal fees and charges, covered in par. (1), redesignated par. (3) as (4), and in redesignated par. (4), authorized placing of restrictions on registrations, suspension or revocation of registration of an introducing broker and appeals from registration decisions made pursuant to this paragraph as provided in sections 9 and 15 of this title, and substituted “if cause exists under paragraph (3) of this section” for “if cause exists under paragraph (2)(B) or (C) of this section”.

Par. (6). Pub. L. 97-444, §104, authorized communication of full facts respecting transactions or market operations to registered futures associations and self-regulatory organizations, included concern for investors, provided for communications when necessary or appropriate to effectuate purposes of this chapter, and prohibited disclosure of furnished information except in self-regulatory actions or proceedings.

Pars. (6) to (8). Pub. L. 97-444, §224(5), struck out “and” at end of pars. (6), (7), and (8).

Par. (9). Pub. L. 97-444, §225, authorized Commission to direct the contract market to take certain action, including, but not limited to, setting of temporary emergency margin levels on any futures contract, and fixing of limits that may apply to a market position acquired in good faith prior to the effective date of Commission’s action and inserted provisions respecting judicial review.

Par. (10). Pub. L. 97-444, §224(6), added par. (10).

1978—Par. (1). Pub. L. 95-405, §17(1), inserted “, which may require the applicant, and any persons associated with the applicant as the Commission may specify, to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing” after “by the Commission”.

Par. (6). Pub. L. 95-405, §17(2), struck out “and to publish” after “any contract market”.

1974—Pub. L. 93-463, §103(a), substituted “Commission” for “Secretary of Agriculture” in provisions preceding par. (1).

Par. (1). Pub. L. 93-463, §§103(a), 204(c), 205(c), substituted “Commission” for “Secretary of Agriculture”, inserted “and persons associated therewith as described in section 6k of this title,” after “futures commission merchants”, and inserted “commodity trading advisors, commodity pool operators” before “and floor brokers”.

Pars. (3), (5), (6). Pub. L. 93-463, §103(a), substituted “Commission” for “Secretary of Agriculture”.

Par. (7). Pub. L. 93-463, §213, amended par. (7) generally, substituting provisions covering the altering or supplementing of the rules of a contract market for provisions covering the disapproval of bylaws, rules, regulations, and resolutions made, issued, or proposed by a contract market.

Par. (8). Pub. L. 93-463, §214, added par. (8).

Par. (9). Pub. L. 93-463, §215, added par. (9).

1968—Par. (2). Pub. L. 90-258, §20, designated existing provisions as subpar. (A), substituted “if the prior registration of such person” for “if such person has violated any of the provisions of this chapter or any of the rules or regulations promulgated by the Secretary of Agriculture hereunder for which the registration of such person” and added subpars. (B) and (C).

Par. (3). Pub. L. 90-258, §21, authorized Secretary of Agriculture, in accordance with procedure provided for in sections 9 and 15 of this title, to suspend or revoke the registration of any person registered under this chapter if cause exists under par. (2)(B) or (C) of this section which would warrant a refusal of registration of such person.

Par. (4). Pub. L. 90-258, §22, struck out authorization for establishment of fees for copies of registration certificates.

Par. (7). Pub. L. 90-258, §23, added par. (7).

1955—Par. (4). Act Aug. 5, 1955, authorized Secretary to fix and establish reasonable fees for registrations and renewals, and struck out provisions which set the fee for each registration and renewal at not more than \$10.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 207(b)(3), (4) of Pub. L. 102-546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102-546, set out as a note under section 6e of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 12b. Trading ban violations; prohibition

It shall be unlawful for any person, against whom there is outstanding any order of the

Commission prohibiting him from trading on or subject to the rules of any registered entity, to make or cause to be made in contravention of such order, any contract for future delivery of any commodity, on or subject to the rules of any registered entity.

(Sept. 21, 1922, ch. 369, §8b, as added Pub. L. 90-258, §24, Feb. 19, 1968, 82 Stat. 33; amended Pub. L. 93-463, title I, §103(a), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(20)], Dec. 21, 2000, 114 Stat. 2763, 2763A-410.)

AMENDMENTS

2000—Pub. L. 106-554 substituted “registered entity” for “contract market” in two places.

1974—Pub. L. 93-463 substituted “Commission” for “Secretary of Agriculture”.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463 see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

§ 12c. Disciplinary actions

(a) Action taken; written notice of reasons for action

(1) Any exchange or the Commission if the exchange fails to act, may suspend, expel, or otherwise discipline any person who is a member of that exchange, or deny any person access to the exchange. Any such action shall be taken solely in accordance with the rules of that exchange.

(2) Any suspension, expulsion, disciplinary, or access denial procedure established by an exchange rule shall provide for written notice to the Commission and to the person who is suspended, expelled, or disciplined, or denied access, within thirty days, which includes the reasons for the exchange action in the form and manner the Commission prescribes. An exchange shall make public its findings and the reasons for the exchange action in any such proceeding, including the action taken or the penalty imposed, but shall not disclose the evidence therefor, except to the person who is suspended, expelled, or disciplined, or denied access, and to the Commission.

(b) Review by Commission

The Commission may, in its discretion and in accordance with such standards and procedures as it deems appropriate, review any decision by an exchange whereby a person is suspended, expelled, otherwise disciplined, or denied access to the exchange. In addition, the Commission may, in its discretion and upon application of any person who is adversely affected by any other exchange action, review such action.

(c) Affirmance, modification, set aside, or remand of action

The Commission may affirm, modify, set aside, or remand any exchange decision it reviews pursuant to subsection (b) of this section, after a determination on the record whether the

action of the exchange was in accordance with the policies of this chapter. Subject to judicial review, any order of the Commission entered pursuant to subsection (b) of this section shall govern the exchange in its further treatment of the matter.

(d) Stay of action

The Commission, in its discretion, may order a stay of any action taken pursuant to subsection (a) of this section pending review thereof.

(e) Major disciplinary rule violations

(1) The Commission shall issue regulations requiring each registered entity to establish and make available to the public a schedule of major violations of any rule within the disciplinary jurisdiction of such registered entity.

(2) The regulations issued by the Commission pursuant to this subsection shall prohibit, for a period of time to be determined by the Commission, any individual who is found to have committed any major violation from service on the governing board of any registered entity or registered futures association, or on any disciplinary committee thereof.

(Sept. 21, 1922, ch. 369, §8c, as added Pub. L. 93-463, title II, §216, Oct. 23, 1974, 88 Stat. 1405; amended Pub. L. 95-405, §18, Sept. 30, 1978, 92 Stat. 874; Pub. L. 102-546, title II, §206(a)(2), Oct. 28, 1992, 106 Stat. 3602; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(20)], Dec. 21, 2000, 114 Stat. 2763, 2763A-410.)

AMENDMENTS

2000—Subsec. (e). Pub. L. 106-554 substituted “registered entity” for “contract market” wherever appearing.

1992—Pub. L. 102-546 redesignated pars. (1) to (4) as subsecs. (a) to (d), respectively, in subsec. (a) redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, in subsec. (c) substituted references to subsection (b) for references to paragraph (2), in subsec. (d) substituted reference to subsection (a) for reference to paragraph (1), and added subsec. (e).

1978—Par. (1)(B). Pub. L. 95-405 substituted “An exchange shall make public its findings and the reasons for the exchange action in any such proceeding, including the action taken or the penalty imposed, but shall not disclose the evidence therefor, except to the person who is suspended, expelled, or disciplined or denied access, and to the Commission” for “Otherwise the notice and reasons shall be kept confidential”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

§ 12d. Commission action for noncompliance with export sales reporting requirements

The Commission may, in accordance with the procedures provided for in this chapter, refuse to register, register conditionally, or suspend, place restrictions upon, or revoke the registration of, any person, and may bar for any period as it deems appropriate any person from using or participating in any manner in any market

regulated by the Commission, if such person is subject to a final decision or order of any court of competent jurisdiction or agency of the United States finding such person to have knowingly violated any provision of the export sales reporting requirements of section 612c-3¹ of this title, or of any regulation issued thereunder.

(Sept. 21, 1922, ch. 369, §8d, as added Pub. L. 97-444, title II, §226, Jan. 11, 1983, 96 Stat. 2316.)

REFERENCES IN TEXT

Section 612c-3 of this title, referred to in text, was repealed by Pub. L. 101-624, title XV, §1578, Nov. 28, 1990, 104 Stat. 3702.

EFFECTIVE DATE

Section effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as an Effective Date of 1983 Amendment note under section 2 of this title.

§ 12e. Repealed. Pub. L. 106-554, §1(a)(5) [title I, §123(a)(21)], Dec. 21, 2000, 114 Stat. 2763, 2763A-410

Section, act Sept. 21, 1922, ch. 369, §8e, as added Pub. L. 102-546, title II, §202(a), Oct. 28, 1992, 106 Stat. 3598, related to Commission oversight and deficiency orders.

§ 13. Violations generally; punishment; costs of prosecution

(a) Felonies generally

It shall be a felony punishable by a fine of not more than \$1,000,000 (or \$500,000 in the case of a person who is an individual) or imprisonment for not more than five years, or both, together with the costs of prosecution, for:

(1) Any person registered or required to be registered under this chapter, or any employee or agent thereof, to embezzle, steal, purloin, or with criminal intent convert to such person's use or to the use of another, any money, securities, or property having a value in excess of \$100, which was received by such person or any employee or agent thereof to margin, guarantee, or secure the trades or contracts of any customer or accruing to such customer as a result of such trades or contracts or which otherwise was received from any customer, client, or pool participant in connection with the business of such person. The word "value" as used in this paragraph means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

(2) Any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to corner or attempt to corner any such commodity or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, or knowingly to violate the provisions of section 6, section 6b, subsections (a) through (e) of subsection¹ 6c,

section 6h, section 6o(1), or section 23 of this title.

(3) Any person knowingly to make, or cause to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement required under this chapter, or by any registered entity or registered futures association in connection with an application for membership or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, or knowingly to omit any material fact required to be stated therein or necessary to make the statements therein not misleading.

(4) Any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a registered entity, board of trade, or futures association designated or registered under this chapter acting in furtherance of its official duties under this chapter.

(5) Any person willfully to violate any other provision of this chapter, or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, but no person shall be subject to imprisonment under this paragraph for the violation of any rule or regulation if such person proves that he had no knowledge of such rule or regulation.

(b) Suspension of convicted felons

Any person convicted of a felony under this section shall be suspended from registration under this chapter and shall be denied registration or reregistration for five years or such longer period as the Commission may determine, and barred from using, or participating in any manner in, any market regulated by the Commission for five years or such longer period as the Commission shall determine, on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof.

(c) Transactions by Commissioners and Commission employees prohibited

It shall be a felony punishable by a fine of not more than \$500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any Commissioner of the Commission or any employee or agent thereof, to participate, directly or indirectly, in any transaction in commodity futures or any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or any transaction for the delivery of any commodity

¹ See References in Text note below.

¹ So in original. Probably should be "section".

under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, or for any such person to participate, directly or indirectly, in any investment transaction in an actual commodity if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission. The foregoing prohibitions shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this subsection.

(d) Use of information by Commissioners and Commission employees prohibited

It shall be a felony punishable by a fine of not more than \$500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity futures or commodity and which information has not been made public to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”, or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract; and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”, or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

(e) Redesignated (d)

(f) Insider trading prohibited

It shall be a felony for any person—

(1) who is an employee, member of the governing board, or member of any committee of a board of trade, registered entity, or registered futures association, in violation of a regulation issued by the Commission, willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of, or willfully and knowingly to disclose for any purpose inconsistent with the performance of such person's official duties as an employee or member, any material nonpublic information obtained through special access related to the performance of such duties.²

(2) willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of any material nonpublic information that such person knows was obtained in violation of paragraph (1) from an employee, member of the governing board, or member of any committee of a board of trade, registered entity, or registered futures association.

Such felony shall be punishable by a fine of not more than \$500,000, plus the amount of any profits realized from such trading or disclosure made in violation of this subsection, or imprisonment for not more than five years, or both, together with the costs of prosecution.

(Sept. 21, 1922, ch. 369, § 9, 42 Stat. 1003; June 15, 1936, ch. 545, §§ 2, 11, 49 Stat. 1491, 1501; Pub. L. 90-258, § 25, Feb. 19, 1968, 82 Stat. 33; Pub. L. 93-463, title II, § 212(d), title IV, §§ 401, 409, Oct. 23, 1974, 88 Stat. 1404, 1412, 1414; Pub. L. 95-405, § 19, Sept. 30, 1978, 92 Stat. 875; Pub. L. 97-444, title II, § 227, Jan. 11, 1983, 96 Stat. 2316; Pub. L. 99-641, title I, §§ 105, 110(3), (4), Nov. 10, 1986, 100 Stat. 3558, 3561; Pub. L. 102-546, title II, §§ 212(a), 214(a), Oct. 28, 1992, 106 Stat. 3608, 3610; Pub. L. 106-554, § 1(a)(5) [title I, § 123(a)(22)], Dec. 21, 2000, 114 Stat. 2763, 2763A-410.)

AMENDMENTS

2000—Subsecs. (a)(2) to (4), (f)(1), (2). Pub. L. 106-554 substituted “registered entity” for “contract market”.

1992—Subsec. (a). Pub. L. 102-546, § 212(a)(1)(A), (C), added subsec. (a) and struck out former subsec. (a) which related to penalty for embezzlement and larcenous actions.

Subsec. (b). Pub. L. 102-546, § 212(a)(1)(A), (C), added subsec. (b) and struck out former subsec. (b) which related to penalty for price manipulation, cornering, and fraudulent information.

Subsec. (c). Pub. L. 102-546, § 212(a)(1)(A), (B), (2), redesignated subsec. (d) as (c), substituted “\$500,000” for “\$100,000”, and struck out former subsec. (c) which related to penalty for misdemeanors.

Subsecs. (d) to (f). Pub. L. 102-546, §§ 212(a)(1)(B), (3), 214(a), redesignated subsec. (e) as (d), substituted “\$500,000” for “\$100,000”, and added subsec. (f).

1986—Subsec. (c). Pub. L. 99-641, § 110(3), substituted “6k.” for “6k.”

Subsec. (d). Pub. L. 99-641, § 110(4), substituted “advance guaranty” for “advance guarantee”.

² So in original. The period probably should be “; or”.

Pub. L. 99-641, §105, inserted “if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission” after “actual commodity”, and substituted provisions which related to foregoing prohibitions not being applicable to transactions determined by Commission not contrary to public interest or inconsistent with this subsection for provisions which read as follows: “Such prohibition against any investment transaction in an actual commodity shall not apply to (1) a transaction in which such person buys an agricultural commodity or livestock for use in such person’s own farming or ranching operations or sells an agricultural commodity which such person has produced in connection with such person’s own farming or ranching operations nor to any transaction in which such person sells livestock owned by such person for at least three months, (2) a transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person, or (3) a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit, or a similar financial instrument if no nonpublic information is used by such person in such transaction. With respect to such excepted transactions, the Commission shall require any Commissioner of the Commission or any employee or agent thereof who participates in any such transaction to notify the Commission thereof in accordance with such regulations as the Commission shall prescribe and the Commission shall make such information available to the public.”

1983—Subsec. (a). Pub. L. 97-444, §227(1), expanded applicability to any person registered or required to be registered under this chapter and inserted provision suspending persons convicted under this subsec. from registration and denying reregistration for five years or longer as determined by the Commission, unless such suspension or denial is not required to protect the public interest.

Subsec. (b). Pub. L. 97-444, §227(2), inserted “A person convicted of a felony under this subsection shall be suspended from any registration under this chapter, denied registration or reregistration for five years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for five years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof.”

Subsec. (c). Pub. L. 97-444, §227(3), inserted “A person convicted under this subsection of knowingly violating the provisions of section 6a of this title shall be suspended from any registration under this chapter, denied registration or reregistration for a period of two years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for two years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof.”

Subsec. (d). Pub. L. 97-444, §227(4), in amending subsec. (d) generally, added to range of felonious conduct, participation in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, and added to nonapplicability of prohibition against any investment transaction in an actual commodity, a transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person, or a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit, or a similar financial instrument if no nonpublic information is used by such person in such transaction.

Subsec. (e). Pub. L. 97-444, §227(5), inserted after words “decline guaranty” each place they appear the following: “, or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract”.

1978—Subsec. (a). Pub. L. 95-405, §19(1), substituted “\$500,000” for “\$100,000” and inserted provision relating to a fine of not more than \$100,000 plus costs of prosecution for a violation by a person who is an individual.

Subsec. (b). Pub. L. 95-405, §19(2), substituted “\$500,000” for “\$100,000” and inserted provisions making felonies the violation of sections 6, 6b, 6c(b) to (e), 6h, 6o(1) and 23 of this title, knowingly making any false or misleading statement of material fact, or omitting such fact in any application or report, and setting the fine for such felonies at not more than \$100,000 for a person who is an individual.

Subsec. (c). Pub. L. 95-405, §19(3), inserted references to subsecs. (d) and (e) of this section and substituted “sections 6a, 6c(a), 6d, 6e, 6i, 6k, 6m, 6o(2), or 12b of this title” for “sections 6 to 6e, 6h, 6i, 6k, 6m, 6o or 12b of this title”.

Subsecs. (d), (e). Pub. L. 95-405, §19(4), (5), substituted “\$100,000” for “\$10,000”.

1974—Subsecs. (a), (b). Pub. L. 93-463, §212(d)(1), (2), substituted “\$100,000” for “\$10,000”.

Subsec. (c). Pub. L. 93-463, §212(d)(3), 409, substituted “\$100,000” for “\$10,000” and inserted reference to sections 6k, 6m, and 6o of this title.

Subsecs. (d), (e). Pub. L. 93-463, §401, added subsecs. (d) and (e).

1968—Subsec. (a). Pub. L. 90-258 added subsec. (a).

Subsec. (b). Pub. L. 90-258 incorporated existing offenses in provisions designated as subsec. (b), changed classification thereof from misdemeanors to felonies, and increased term of imprisonment from not more than one year to not more than five years.

Subsec. (c). Pub. L. 90-258 incorporated existing offenses in provisions designated as subsec. (c), and included penalty for violation of section 12b of this title.

1936—Act June 15, 1936, amended section generally and provided that price manipulations of commodities in interstate commerce was a violation.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

REGULATIONS

Section 214(b) of Pub. L. 102-546 provided that: "The Commodity Futures Trading Commission shall issue regulations to implement the amendment made by subsection (a) [amending this section] not later than three hundred and sixty days after the date of enactment of this Act [Oct. 28, 1992]."

PENALTIES STUDY AND GUIDELINES

Section 225 of Pub. L. 102-546 provided that:

"(a) STUDY.—The Commodity Futures Trading Commission shall study the penalties the Commission imposes against persons found to have violated the Commodity Exchange Act (7 U.S.C. 1 et seq.) and the penalties imposed by contract markets and registered futures associations against persons found to have violated their respective rules established under such Act.

"(b) REPORT.—Not later than two years after the date of enactment of this Act [Oct. 28, 1992], the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the study conducted under subsection (a). The report shall—

"(1) include an analysis of whether systematic differences exist among penalties imposed by various contract markets and registered futures associations for similar offenses, and, if so, the causes of such differences;

"(2) propose industry-wide guidelines or rules to make penalty levels among contract markets and registered futures associations consistent, including, if appropriate, minimum penalties or penalty ranges for various offenses; and

"(3) propose guidelines or rules to make Commission penalty levels consistent, including, if appropriate, minimum penalties or penalty ranges for various offenses."

§ 13-1. Violations, prohibition against dealings in onion futures; punishment

(a) No contract for the sale of onions for future delivery shall be made on or subject to the rules of any board of trade in the United States. The terms used in this section shall have the same meaning as when used in this chapter.

(b) Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not more than \$5,000.

(Pub. L. 85-839, §1, Aug. 28, 1958, 72 Stat. 1013.)

CODIFICATION

Section was not enacted as part of the Commodity Exchange Act which comprises this chapter.

EFFECTIVE DATE

Section 2 of Pub. L. 85-839 provided that: "This Act [enacting this section] shall take effect thirty days after its enactment [Aug. 28, 1958]."

§ 13a. Nonenforcement of rules of government or other violations; cease and desist orders; fines and penalties; imprisonment; misdemeanor; separate offenses

If any registered entity is not enforcing or has not enforced its rules of government made a condition of its designation or registration as set forth in sections 7 through 7a-2 of this title, or if any registered entity, or any director, officer, agent, or employee of any registered entity otherwise is violating or has violated any of the provisions of this chapter or any of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing on the record and subject to appeal as in other cases provided for in section 8(b) of this title, make and enter an order directing that such registered entity, director, officer, agent, or employee shall cease and desist from such violation, and assess a civil penalty of not more than \$500,000 for each such violation. If such registered entity, director, officer, agent, or employee, after the entry of such a cease and desist order and the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such registered entity, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or refusal to obey such cease and desist order continues shall be deemed a separate offense. If the offending registered entity or other person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty, the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court. In determining the amount of the money penalty assessed under this section, the Commission shall consider the gravity of the offense, and in the case of a registered entity shall further consider whether the amount of the penalty will materially impair the ability of the registered entity to carry on its operations and duties.

(Sept. 21, 1922, ch. 369, §6b, as added June 15, 1936, ch. 545, §9, 49 Stat. 1500; amended Pub. L. 90-258, §18, Feb. 19, 1968, 82 Stat. 31; Pub. L. 93-463, title II, §212(b), Oct. 23, 1974, 88 Stat. 1403; Pub. L. 95-405, §14, Sept. 30, 1978, 92 Stat. 872; Pub. L. 102-546, title II, §§209(b)(5), 212(c), Oct. 28, 1992, 106 Stat. 3607, 3609; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(14)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409.)

AMENDMENTS

2000—Pub. L. 106-554 substituted "registered entity" for "contract market" wherever appearing, "designation or registration as set forth in sections 7 through 7a-2 of this title" for "designation as set forth in section 7 of this title" in first sentence, and "the ability of the registered entity" for "the contract market's ability" in last sentence.

1992—Pub. L. 102-546 substituted “section 8(b) of this title” for “paragraph (a) of section 8 of this title”, substituted “\$500,000” for “\$100,000” in two places, and in last sentence struck out “the appropriateness of such penalty to the net worth of the offending person and” after “Commission shall consider”.

1978—Pub. L. 95-405 inserted “on the record” after “notice and hearing”.

1974—Pub. L. 93-463 inserted provision for assessment of a civil penalty of not more than \$100,000 for each violation, substituted “not more than \$100,000” for “not less than \$500 nor more than \$10,000” as permissible range of fines imposed, inserted provisions for enforcement of a penalty, and substituted “orders of the Commission” for “orders of the Secretary of Agriculture or the commission”.

1968—Pub. L. 90-258 amended section to clarify application only to boards of trade designated as contract markets, to include as grounds for cease and desist orders failure to enforce the market’s rules of government made a condition of its designation and violation of rules or regulations of the commission or orders of the Secretary, and to authorize such orders in conjunction with a suspension or revocation of designation as a contract market rather than in lieu of suspension or revocation.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 13a-1. Enjoining or restraining violations

(a) Action to enjoin or restrain violations

Whenever it shall appear to the Commission that any registered entity or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery, the Commission may bring an action in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such act or practice, or to enforce compliance with this chapter, or any rule, regulation or order thereunder, and said courts shall have jurisdiction to entertain such actions: *Provided*, That no restraining order (other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property, and other than an order appointing a temporary receiver to administer such restraining order

and to perform such other duties as the court may consider appropriate) or injunction for violation of the provisions of this chapter shall be issued ex parte by said court.

(b) Injunction or restraining order

Upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond.

(c) Writs or other orders

Upon application of the Commission, the district courts of the United States and the United States courts of any territory or other place subject to the jurisdiction of the United States shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder, including the requirement that such person take such action as is necessary to remove the danger of violation of this chapter or any such rule, regulation, or order: *Provided*, That no such writ of mandamus, or order affording like relief, shall be issued ex parte.

(d) Civil penalties

(1) In any action brought under this section, the Commission may seek and the court shall have jurisdiction to impose, on a proper showing, on any person found in the action to have committed any violation a civil penalty in the amount of not more than the higher of \$100,000 or triple the monetary gain to the person for each violation.

(2) If a person on whom such a penalty is imposed fails to pay the penalty within the time prescribed in the court’s order, the Commission may refer the matter to the Attorney General who shall recover the penalty by action in the appropriate United States district court.

(e) Venue and process

Any action under this section may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or in the district where the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(f) Action by Attorney General

In lieu of bringing actions itself pursuant to this section, the Commission may request the Attorney General to bring the action.

(g) Notice to Attorney General of action brought by Commission

Where the Commission elects to bring the action, it shall inform the Attorney General of such suit and advise him of subsequent developments.

(h) Notice of investigations and enforcement actions

The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 6f(a)(2)

of this title, any floor broker or floor trader exempt from registration pursuant to section 6f(a)(3) of this title, any associated person exempt from registration pursuant to section 6k(6)¹ of this title, or any board of trade designated as a contract market pursuant to section 7b-1 of this title.

(Sept. 21, 1922, ch. 369, §6c, as added Pub. L. 93-463, title II, §211, Oct. 23, 1974, 88 Stat. 1402; amended Pub. L. 97-444, title II, §220, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 99-641, title I, §104, Nov. 10, 1986, 100 Stat. 3557; Pub. L. 102-546, title II, §221, Oct. 28, 1992, 106 Stat. 3614; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(15), title II, §253(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409, 2763A-449.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(15)], substituted “registered entity” for “contract market”.

Subsec. (h). Pub. L. 106-554, §1(a)(5) [title II, §253(c)], added subsec. (h).

1992—Pub. L. 102-546 designated first, second, and third sentences as subssecs. (a) to (c), respectively, added subsec. (d), and designated fourth, fifth, and sixth sentences as subssecs. (e) to (g), respectively.

1986—Pub. L. 99-641 inserted “, and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate”.

1983—Pub. L. 97-444 inserted “(other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property)” after “*Provided*, That no restraining order”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§ 13a-2. Jurisdiction of States

(1) Whenever it shall appear to the attorney general of any State, the administrator of the securities laws of any State, or such other official as a State may designate, that the interests of the residents of that State have been, are being, or may be threatened or adversely affected because any person (other than a contract market, derivatives transaction execution facility, clearinghouse, floor broker, or floor trader) has engaged in, is engaging or is about to engage in, any act or practice constituting a violation of any provision of this chapter or any rule, regulation, or order of the Commission thereunder, the State may bring a suit in equity or an action at law on behalf of its residents to enjoin such act or practice, to enforce compliance with this chapter, or any rule, regulation, or order of the Commission thereunder, to obtain damages

on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(2) The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia, shall have jurisdiction of all suits in equity and actions at law brought under this section to enforce any liability or duty created by this chapter or any rule, regulation, or order of the Commission thereunder, or to obtain damages or other relief with respect thereto. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder, including the requirement that the defendant take such action as is necessary to remove the danger of violation of this chapter or of any such rule, regulation, or order. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

(3) Immediately upon instituting any such suit or action, the State shall serve written notice thereof upon the Commission and provide the Commission with a copy of its complaint, and the Commission shall have the right to (A) intervene in the suit or action and, upon doing so, shall be heard on all matters arising therein, and (B) file petitions for appeal.

(4) Any suit or action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the act or practice occurred, is occurring, or is about to occur, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(5) For purposes of bringing any suit or action under this section, nothing in this chapter shall prevent the attorney general, the administrator of the State securities laws, or other duly authorized State officials from exercising the powers conferred on them by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(6) For purposes of this section, “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(7) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(8)(A) Nothing in this chapter shall prohibit an authorized State official from proceeding in a State court against any person registered under this chapter (other than a floor broker, floor trader, or registered futures association) for an alleged violation of any antifraud provision of this chapter or any antifraud rule, regulation, or order issued pursuant to the chapter.

(B) The State shall give the Commission prior written notice of its intent to proceed before instituting a proceeding in State court as de-

¹ So in original. Probably should refer to the second par. (5) of section 6k.

scribed in this subsection and shall furnish the Commission with a copy of its complaint immediately upon instituting any such proceeding. The Commission shall have the right to (i) intervene in the proceeding and, upon doing so, shall be heard on all matters arising therein, and (ii) file a petition for appeal. The Commission or the defendant may remove such proceeding to the district court of the United States for the proper district by following the procedure for removal otherwise provided by law, except that the petition for removal shall be filed within sixty days after service of the summons and complaint upon the defendant. The Commission shall have the right to appear as *amicus curiae* in any such proceeding.

(Sept. 21, 1922, ch. 369, §6d, as added Pub. L. 95-405, §15, Sept. 30, 1978, 92 Stat. 872; amended Pub. L. 97-444, title II, §221, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 102-546, title II, §207(b)(1), (2), Oct. 28, 1992, 106 Stat. 3604; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(16)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409.)

AMENDMENTS

2000—Par. (1). Pub. L. 106-554 inserted “derivatives transaction execution facility,” after “contract market.”

1992—Pars. (1), (8)(A). Pub. L. 102-546 inserted reference to floor trader.

1983—Par. (8). Pub. L. 97-444 added par. (8).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-546 effective 180 days after Oct. 28, 1992, with Commodity Futures Trading Commission to issue any regulations necessary to implement such amendment no later than 180 days after Oct. 28, 1992, see section 207(c) of Pub. L. 102-546, set out as a note under section 6e of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

§ 13b. Manipulations or other violations; cease and desist orders against persons other than registered entities; punishment; misdemeanor or felony; separate offenses

If any person (other than a registered entity) is manipulating or attempting to manipulate or has manipulated or attempted to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or otherwise is violating or has violated any of the provisions of this chapter or of the rules, regulations, or orders of the Commission or the commission¹ thereunder, the Commission may, upon notice and hearing, and subject to appeal as in other cases provided for in sections 9 and 15 of this title, make and enter an order directing that such person shall cease and desist therefrom and, if such person thereafter and after the

lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the higher of \$100,000 or triple the monetary gain to such person, or imprisoned for not less than six months nor more than one year, or both, except that if such failure or refusal to obey or comply with such order involves any offense within paragraph (a) or (b) of section 13 of this title, such person shall be guilty of a felony and, upon conviction thereof, shall be subject to the penalties of said paragraph (a) or (b): *Provided*, That any such cease and desist order against any respondent in any case of manipulation of, or attempt to manipulate, the price of any commodity shall be issued only in conjunction with an order issued against such respondent under sections 9 and 15 of this title. Each day during which such failure or refusal to obey or comply with such order continues shall be deemed a separate offense.

(Sept. 21, 1922, ch. 369, §6(d), formerly §6(c), as added Pub. L. 90-258, §17, Feb. 19, 1968, 82 Stat. 31; amended Pub. L. 93-463, title I, §103(a), (b), title II, §212(c), Oct. 23, 1974, 88 Stat. 1392, 1404; renumbered §6(d) and amended Pub. L. 102-546, title II, §§209(a)(1), (4), 212(b), Oct. 28, 1992, 106 Stat. 3606, 3609; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(D)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409.)

CODIFICATION

Section is comprised of subsec. (d) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to sections 9 and 15 of this title. Subsecs. (e), (f), and (g) of section 6 are classified to sections 9a, 9b, and 9c of this title, respectively.

AMENDMENTS

2000—Pub. L. 106-554 substituted “registered entity” for “contract market” in two places.

1992—Pub. L. 102-546 made technical amendment to references to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act and substituted “the higher of \$100,000 or triple the monetary gain to such person” for “\$100,000”.

1974—Pub. L. 93-463, §§103(a), 212(c), substituted “Commission” for “Secretary” before “may” and substituted “not more than \$100,000” for “not less than \$500 nor more than \$10,000”.

Pub. L. 93-463, §103(a), provided for substitution of “Commission” for “Secretary of Agriculture” except where such words would be stricken by section 103(b), which directed striking the words “the Secretary of Agriculture or” where they appeared in the phrase “the Secretary of Agriculture or the Commission”. Because the word “commission” was not capitalized in the text of this section, section 103(b) did not apply to this section and therefore section 103(a) was executed, resulting in the substitution of “the Commission or the commission” for “the Secretary of Agriculture or the commission”.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

¹ So in original. The words “or the commission” probably should not appear.

§ 13c. Responsibility as principal; minor violations

(a) Any person who commits, or who willfully aids, abets, counsels, commands, induces, or procures the commission of, a violation of any of the provisions of this chapter, or any of the rules; regulations, or orders issued pursuant to this chapter, or who acts in combination or concert with any other person in any such violation, or who willfully causes an act to be done or omitted which if directly performed or omitted by him or another would be a violation of the provisions of this chapter or any of such rules, regulations, or orders may be held responsible for such violation as a principal.

(b) Any person who, directly or indirectly, controls any person who has violated any provision of this chapter or any of the rules, regulations, or orders issued pursuant to this chapter may be held liable for such violation in any action brought by the Commission to the same extent as such controlled person. In such action, the Commission has the burden of proving that the controlling person did not act in good faith or knowingly induced, directly or indirectly, the act or acts constituting the violation.

(c) Nothing in this chapter shall be construed as requiring the Commission or the Commission¹ to report minor violations of this chapter for prosecution, whenever it appears that the public interest does not require such action.

(Sept. 21, 1922, ch. 369, §13, as added Pub. L. 90-258, §26, Feb. 19, 1968, 82 Stat. 34; amended Pub. L. 93-463, title I, §103(a), (b), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 97-444, title II, §230, Jan. 11, 1983, 96 Stat. 2319; Pub. L. 102-546, title IV, §402(1)(D), (9)(C), Oct. 28, 1992, 106 Stat. 3624, 3625.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102-546, §402(9)(C), which directed that “the Secretary of Agriculture or” be struck out, could not be executed because of amendment by Pub. L. 93-463, §103(a). See 1974 Amendment note below.

Pub. L. 102-546, §402(1)(D), substituted “Commission” for “commission” before “to report”.

1983—Subsec. (a). Pub. L. 97-444, §230(1), struck out “in administrative proceedings under this chapter” after “may be held responsible”.

Subsecs. (b), (c). Pub. L. 97-444, §230(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

1974—Subsec. (b). Pub. L. 93-463, §103(a), provided for substitution of “Commission” for “Secretary of Agriculture” except where such words would be stricken by section 103(b), which directed striking the words “the Secretary of Agriculture or” where they appeared in the phrase “the Secretary of Agriculture or the Commission”. Because the word “commission” was not capitalized in the text of this section, section 103(b) did not apply to this section and therefore section 103(a) was executed, resulting in the substitution of “the Commission or the commission” for “the Secretary of Agriculture or the commission”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

¹ So in original. The words “or the Commission” probably should not appear.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

§ 14. Repealed. Pub. L. 99-641, title I, §110(5), Nov. 10, 1986, 100 Stat. 3561

Section, act Sept. 21, 1922, ch. 369, §11, 42 Stat. 1003, provided that violations of this chapter occurring before Nov. 1, 1922, should not be punishable.

§ 15. Enforcement powers of Commission

For the purpose of securing effective enforcement of the provisions of this chapter, for the purpose of any investigation or proceeding under this chapter, and for the purpose of any action taken under section 16(f) of this title, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in the third sentence of this section) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing. A subpoena issued under this section may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found.

(Sept. 21, 1922, ch. 369, §6(c), formerly §6(b), 42 Stat. 1002; June 15, 1936, ch. 545, §8(e)-(g), 49 Stat. 1499; June 16, 1955, ch. 151, 69 Stat. 160; Pub.

L. 91-452, title II, §202, Oct. 15, 1970, 84 Stat. 928; Pub. L. 93-463, title I, §103(d), title IV, §408(b), Oct. 23, 1974, 88 Stat. 1392, 1414; Pub. L. 95-405, §13(3), Sept. 30, 1978, 92 Stat. 871; Pub. L. 99-641, title I, §103, Nov. 10, 1986, 100 Stat. 3557; renumbered §6(c) and amended Pub. L. 102-546, title II, §209(a)(1), title III, §301, title IV, §402(7), Oct. 28, 1992, 106 Stat. 3606, 3622, 3624.)

REFERENCES IN TEXT

This section, referred to in text, means section 6 of act Sept. 21, 1922, ch. 369, 42 Stat. 1001. For classification of section 6 to the Code, see Codification note below.

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Section is comprised of part of subsec. (c) of section 6 of act Sept. 21, 1922. A further provision of subsec. (c) is contained in section 9 of this title. This subsec. (c) [former par. (a)] prior to its incorporation into the Code contained a provision as to finality of judgments and review by the Supreme Court and is covered by section 1254 of Title 28, Judiciary and Judicial Procedure. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsecs. (d), (e), (f), and (g) of section 6 are classified to sections 13b, 9a, 9b, and 9c of this title, respectively.

AMENDMENTS

1992—Pub. L. 102-546 substituted “chapter,” for “chapter and” after “provisions of this”, “chapter, and for the purpose of any action taken under section 16(f) of this title, any” for “chapter, any”, and “subpoena” for “subpena” wherever appearing.

1986—Pub. L. 99-641 inserted “(except as provided in the third sentence of this section)”, substituted “, any State, or any foreign country or jurisdiction” for “or any State”, and inserted provisions which related to service of subpoena upon person not found within territorial jurisdiction of United States.

1978—Pub. L. 95-405 substituted provisions giving Commission or any Administrative Law Judge or other officer designated by Commission independent authority to administer oaths and affirmations, to subpoena witnesses, and related actions for the purpose of conducting investigations and proceedings with regard to this chapter for provisions basing authority of Commission or any Administrative Law Judge with regard to investigations and proceedings under this chapter on the Interstate Commerce Act and inserted provisions authorizing Commission to invoke the aid of the courts in requiring attendance and testimony of witnesses and the production of books and other records.

1974—Pub. L. 93-463 struck out “the Secretary of Agriculture (or any person designated by him),” after “jurisdiction, and authority of” and substituted “Administrative Law Judge” for “referee”.

1970—Pub. L. 91-452 struck out references to sections 46-48 of title 49, and provisions relating to the immunity of witnesses.

1955—Act June 16, 1955, extended subpoena power to investigations.

1936—Act June 15, 1936, §8(e), (f), substituted “sections 12 and 46-48 of title 49” for “section 12 of title 49”.

Act June 15, 1936, §8(g), substituted “and” for “or” after “commission”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment of Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

§ 15a. Repealed. Pub. L. 95-405, §24, Sept. 30, 1978, 92 Stat. 877

Section, Pub. L. 93-463, title II, §217, Oct. 23, 1974, 88 Stat. 1405, related to leverage contracts for gold and silver. See section 23(b) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

§ 15b. Cotton futures contracts

(a) Short title

This section may be cited as the “United States Cotton Futures Act”.

(b) Repeal of tax on cotton futures

Subchapter D of chapter 39 of title 26 (relating to tax on cotton futures) is repealed.

(c) Definitions

For purposes of this section—

(1) Cotton futures contract

The term “cotton futures contract” means any contract of sale of cotton for future delivery made at, on, or in any exchange, board of trade, or similar institution or place of business which has been designated a “contract market” by the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act [7 U.S.C. 1 et seq.] and the term “contract of sale” as so used shall be held to include sales, agreements of sale, and agreements to sell, except that any cotton futures contract that, by its terms, is settled in cash is excluded from the coverage of this paragraph and section.

(2) Future delivery

The term “future delivery” shall not include any cash sale of cotton for deferred shipment or delivery.

(3) Person

The term “person” includes an individual, trust, estate, partnership, association, company, or corporation.

(4) Secretary

The term “Secretary” means the Secretary of Agriculture of the United States.

(5) Standards

The term “standards” means the official cotton standards of the United States established by the Secretary pursuant to the United States Cotton Standards Act, as amended [7 U.S.C. 51 et seq.].

(d) Bona fide spot markets and commercial differences

(1) Definition

For purposes of this section, the only markets which shall be considered bona fide spot markets shall be those which the Secretary shall, from time to time, after investigation, determine and designate to be such, and of which he shall give public notice.

(2) Determination

In determining, pursuant to the provisions of this section, what markets are bona fide spot markets, the Secretary is directed to consider only markets in which spot cotton is sold in such volume and under such conditions as customarily to reflect accurately the value of middling cotton and the differences between the prices or values of middling cotton and of other grades of cotton for which standards shall have been established by the Secretary; except that if there are not sufficient places, in the markets of which are made bona fide sales of spot cotton of grades for which standards are established by the Secretary, to enable him to designate at least five spot markets in accordance with subsection (f)(3) of this section, he shall, from data as to spot sales collected by him, make rules and regulations for determining the actual commercial differences in the value of spot cotton of the grades established by him as reflected by bona fide sales of spot cotton, of the same or different grades, in the market selected and designated by him, from time to time, for that purpose, and in that event differences in value of cotton of various grades involved in contracts made pursuant to subsection (f)(1) and (2) of this section shall be determined in compliance with such rules and regulations. It shall be the duty of any person engaged in the business of dealing in cotton, when requested by the Secretary or any agent acting under his instructions, to answer correctly to the best of his knowledge, under oath or otherwise, all questions touching his knowledge of the number of bales, the classification, the price or bona fide price offered, and other terms of purchase or sale, of any cotton involved in any transaction participated in by him, or to produce all books, letters, papers, or documents in his possession or under his control relating to such matter. A person complying with the preceding sentence shall not be liable for any loss or damage arising or resulting from such compliance.

(3) Withholding information

Any person engaged in the business of dealing in cotton who shall, within a reasonable time prescribed by the Secretary or any agent acting under his instructions, willfully fail or refuse to answer questions or to produce books, letters, papers, or documents, as required under paragraph (2) of this subsection, or who shall willfully give any answer that is false or misleading, shall, upon conviction thereof, be fined not more than \$500.

(e) Form and validity of cotton futures contracts

Each cotton futures contract shall be a basis grade contract, or a tendered grade contract, or

a specific grade contract as specified in subsections (f), (g), or (h) of this section and shall be in writing plainly stating, or evidenced by written memorandum showing, the terms of such contract, including the quantity of the cotton involved and the names and addresses of the seller and buyer in such contract, and shall be signed by the party to be charged, or by his agent in his behalf. No cotton futures contract which does not conform to such requirements shall be enforceable by, or on behalf of, any party to such contract or his privies.

(f) Basis grade contracts

(1) Conditions

Each basis grade cotton futures contract shall comply with each of the following conditions:

(A) Conformity with regulations

Conform to the regulations made pursuant to this section.

(B) Specification of grade, price, and dates of sale and settlement

Specify the basis grade for the cotton involved in the contract, which shall be one of the grades for which standards are established by the Secretary, except grades prohibited from being delivered on a contract made under this subsection by subparagraph (E), the price per pound at which the cotton of such basis grade is contracted to be bought or sold, the date when the purchase or sale was made, and the month or months in which the contract is to be fulfilled or settled; except that middling shall be deemed the basis grade incorporated into the contract if no other basis grade be specified either in the contract or in the memorandum evidencing the same.

(C) Provision for delivery of standard grades only

Provide that the cotton dealt with therein or delivered thereunder shall be of or within the grades for which standards are established by the Secretary except grades prohibited from being delivered on a contract made under this subsection by subparagraph (E) and no other grade or grades.

(D) Provision for settlement on basis of actual commercial differences

Provide that in case cotton of grade other than the basis grade be tendered or delivered in settlement of such contract, the differences above or below the contract price which the receiver shall pay for such grades other than the basis grade shall be the actual commercial differences, determined as hereinafter provided.

(E) Prohibition of delivery of inferior cotton

Provide that cotton that, because of the presence of extraneous matter of any character, or irregularities or defects, is reduced in value below that of low middling, or cotton that is below the grade of low middling, or, if tinged, cotton that is below the grade of strict middling, or, if yellow stained, cotton that is below the grade of good middling, the grades mentioned being of the official

cotton standards of the United States, or cotton that is less than seven-eighths of an inch in length of staple, or cotton of perished staple, or of immature staple, or cotton that is “gin cut” or reginned, or cotton that is “repacked” or “false packed” or “mixed packed” or “water packed”, shall not be delivered on, under, or in settlement of such contract.

(F) Provisions for tender in full, notice of delivery date, and certificate of grade

Provide that all tenders of cotton under such contract shall be the full number of bales involved therein, except that such variations of the number of bales may be permitted as is necessary to bring the total weight of the cotton tendered within the provisions of the contract as to weight; that, on the fifth business day prior to delivery, the person making the tender shall give to the person receiving the same written notice of the date of delivery, and that, on or prior to the date so fixed for delivery, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a written notice or certificate stating the grade of each individual bale to be delivered and, by means of marks or numbers, identifying each bale with its grade.

(G) Provision for tender and settlement in accordance with Government classification

Provide that all tenders of cotton and settlements therefor under such contract shall be in accordance with the classification thereof made under the regulations of the Secretary by such officer or officers of the Government as shall be designated for the purpose, and the costs of such classification shall be fixed, assessed, collected, and paid as provided in such regulations and shall be credited to the account referred to in section 55 of this title. The Secretary may provide by regulation conditions under which cotton samples submitted or used in the performance of services authorized by this act shall become the property of the United States and may be sold and the proceeds credited to the foregoing account: *Provided*, That such cotton samples shall not be subject to the provisions of the Federal Property and Administrative Services Act of 1949.¹ The Secretary is authorized to prescribe regulations for carrying out the purposes of this subparagraph and the certificates of the officers of the Government as to the classification of any cotton for the purposes of this subparagraph shall be accepted in the courts of the United States in all suits between the parties to such contract, or their privies, as prima facie evidence of the true classification of the cotton involved.

(2) Incorporation of conditions in contracts

The provisions of paragraphs (1)(C), (D), (E), (F), and (G) shall be deemed fully incorporated into any such contract if there be written or

printed thereon, or on the memorandums evidencing the same, at or prior to the time the same is signed, the phrase “Subject to United States Cotton Futures Act, subsection (f).”

(3) Delivery allowances

For the purpose of this subsection, the differences above or below the contract price which the receiver shall pay for cotton of grades above or below the basic² grade in the settlement of a contract of sale for the future delivery of cotton shall be determined by the actual commercial differences in value thereof upon the sixth business day prior to the day fixed, in accordance with paragraph (1)(F), for the delivery of cotton on the contract, established by the sale of spot cotton in the spot markets of not less than five places designated for the purpose from time to time by the Secretary, as such values were established by the sales of spot cotton, in such designated five or more markets. For purposes of this paragraph, such values in the such spot markets shall be based upon the standards for grades of cotton established by the Secretary. Whenever the value of one grade is to be determined from the sale or sales of spot cotton of another grade or grades, such value shall be fixed in accordance with rules and regulations which shall be prescribed for the purpose by the Secretary.

(g) Tendered grade contracts

(1) Conditions

Each tendered grade cotton future contract shall comply with each of the following conditions:

(A) Compliance with subsection (f)

Comply with all the terms and conditions of subsection (f) of this section not inconsistent with this subsection; and

(B) Provision for contingent specific performance

Provide that, in case cotton of grade or grades other than the basis grade specified in the contract shall be tendered in performance of the contract, the parties to such contract may agree, at the time of the tender, as to the price of the grade or grades so tendered, and that if they shall not then agree as to such price, then, and in that event, the buyer of said contract shall have the right to demand the specific fulfillment of such contract by the actual delivery of cotton of the basis grade named therein and at the price specified for such basis grade in said contract.

(2) Incorporation of conditions in contract

Contracts made in compliance with this subsection shall be known as “subsection (g) Contracts”. The provisions of this subsection shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the memorandum evidencing the same, at or prior to the time the same is signed, the phrase “Subject to United States Cotton Futures Act, subsection (g)”.

¹ See References in Text note below.

² So in original. Probably should be “basis”.

(3) Application of subsection

Nothing in this subsection shall be so construed as to authorize any contract in which, or in the settlement of or in respect to which, any device or arrangement whatever is resorted to, or any agreement is made, for the determination or adjustment of the price of the grade or grades tendered other than the basis grade specified in the contract by any “fixed difference” system, or by arbitration, or by any other method not provided for by this section.

(h) Specific grade contracts**(1) Conditions**

Each specific grade cotton futures contract shall comply with each of the following conditions:

(A) Conformity with rules and regulations

Conform to the rules and regulations made pursuant to this section.

(B) Specification of grade, price, dates of sale and delivery

Specify the grade, type, sample, or description of the cotton involved in the contract, the price per pound at which such cotton is contracted to be bought or sold, the date of the purchase or sale, and the time when shipment or delivery of such cotton is to be made.

(C) Prohibition of delivery of other than specified grade

Provide that cotton of or within the grade or of the type, or according to the sample or description, specified in the contract shall be delivered thereunder, and that no cotton which does not conform to the type, sample, or description, or which is not of or within the grade specified in the contract shall be tendered or delivered thereunder.

(D) Provision for specific performance

Provide that the delivery of cotton under the contract shall not be effected by means of “setoff” or “ring” settlement, but only by the actual transfer of the specified cotton mentioned in the contract.

(2) Incorporation of conditions in contract

The provisions of paragraphs (1)(A), (C), and (D) shall be deemed fully incorporated into any such contract if there be written or printed thereon, or on the document or memorandum evidencing the same, at or prior to the time the same is entered into, the words “Subject to United States Cotton Futures Act, subsection (h)”.

(3) Application of subsection

This subsection shall not be construed to apply to any contract of sale made in compliance with subsection (f) or (g) of this section.

(i) Liability of principal for acts of agent

When construing and enforcing the provisions of this section, the act, omission, or failure of any official, agent, or other person acting for or employed by any association, partnership, or corporation within the scope of his employment or office shall, in every case, also be deemed the

act, omission, or failure of such association, partnership, or corporation, as well as that of the person.

(j) Regulations

The Secretary is authorized to make such regulations with the force and effect of law as he determines may be necessary to carry out the provisions of this section and the powers vested in him by this section.

(k) Violations

Any person who knowingly violates any regulation made in pursuance of this section, shall, upon conviction thereof, be fined not less than \$100 nor more than \$500, for each violation thereof, in the discretion of the court, and, in case of natural persons, may, in addition be punished by imprisonment for not less than 30 days nor more than 90 days, for each violation, in the discretion of the court except that this subsection shall not apply to violations subject to subsection (d)(3) of this section.

(l) Applicability to contracts prior to effective date

The provisions of this section shall not apply to any cotton futures contract entered into prior to the effective date of this section or to any act or failure to act by any person prior to such effective date and all such prior contracts, acts or failure to act shall continue to be governed by the applicable provisions of the Internal Revenue Code of 1954¹ as in effect prior to the enactment of this section. All designations of bona fide spot markets and all rules and regulations issued by the Secretary pursuant to the applicable provisions of the Internal Revenue Code of 1954¹ which were in effect on the effective date of this section, shall remain fully effective as designations and regulations under this section until superseded, amended, or terminated by the Secretary.

(m) Authorization

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 94-455, title XIX, §1952(a)-(m), Oct. 4, 1976, 90 Stat. 1841-1846; Pub. L. 97-35, title I, §156(c), Aug. 13, 1981, 95 Stat. 374; Pub. L. 102-237, title I, §123, Dec. 13, 1991, 105 Stat. 1844; Pub. L. 106-472, title III, §311, Nov. 9, 2000, 114 Stat. 2076.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (c)(1), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of this title. For complete classification of this Act to the Code, see section 1 of this title and Tables.

The United States Cotton Standards Act, as amended, referred to in subsec. (c)(5), is act Mar. 4, 1923, ch. 288, 42 Stat. 1517, as amended, which is classified generally to chapter 2 (§51 et seq.) of this title. For complete classification of this Act to the Code, see section 51 of this title and Tables.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (f)(1)(G), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107-217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

The Internal Revenue Code of 1954, referred to in subsec. (l), was redesignated the Internal Revenue Code of 1986 by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, and is classified to Title 26, Internal Revenue Code.

CODIFICATION

Section was enacted as part of the Tax Reform Act of 1976, and not as part of the Commodity Exchange Act which comprises this chapter.

This section, referred to in subsec. (c)(1), was in the original a reference to this “Act”, meaning the United States Cotton Futures Act, which comprises this section.

AMENDMENTS

2000—Subsec. (d)(2). Pub. L. 106-472 inserted at end “A person complying with the preceding sentence shall not be liable for any loss or damage arising or resulting from such compliance.”

1991—Subsec. (c)(1). Pub. L. 102-237 inserted before period at end “, except that any cotton futures contract that, by its terms, is settled in cash is excluded from the coverage of this paragraph and section”.

1981—Subsec. (f)(1)(G). Pub. L. 97-35 inserted provisions relating to crediting to account referred to in section 55 of this title and provisions respecting cotton samples submitted or used becoming the property of the United States.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 156(e) of Pub. L. 97-35, set out as an Effective Date note under section 61a of this title.

EFFECTIVE DATE

Section 1952(o) of Pub. L. 94-455 provided that: “The provisions of this section [enacting this section, amending section 6808 of Title 26, Internal Revenue Code, and repealing sections 7233 and 7263, subchapter D of chapter 39, and subchapter E of chapter 76 of Title 26] shall take effect on the 90th day after the date of enactment of this Act [Oct. 4, 1976].”

§ 16. Commission operations

(a) Cooperation with other agencies

The Commission may cooperate with any Department or agency of the Government, any State, territory, district, or possession, or department, agency, or political subdivision thereof, any foreign futures authority, any department or agency of a foreign government or political subdivision thereof, or any person.

(b) Employment of investigators, experts, Administrative Law Judges, consultants, clerks, and other personnel; contracts

(1) The Commission shall have the authority to employ such investigators, special experts, Administrative Law Judges, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

(2) The Commission may employ experts and consultants in accordance with section 3109 of title 5, and compensate such persons at rates not in excess of the maximum daily rate prescribed for GS-18 under section 5332 of title 5.

(3) The Commission shall also have authority to make and enter into contracts with respect to all matters which in the judgment of the Commission are necessary and appropriate to effectuate the purposes and provisions of this chapter, including, but not limited to, the rental of

necessary space at the seat of Government and elsewhere.

(4) The Commission may request (in accordance with the procedures set forth in subchapter II of chapter 31 of title 5) and the Office of Personnel Management shall authorize pursuant to the request, eight positions in the Senior Executive Service in addition to the number of such positions authorized for the Commission on October 28, 1992.

(c) Expenses

All of the expenses of the Commissioners, including all necessary expenses for transportation incurred by them while on official business of the Commission, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this chapter for each of fiscal years 1995 through 2005.

(e) Relation to other law, departments, or agencies

(1) Nothing in this chapter shall supersede or preempt—

(A) criminal prosecution under any Federal criminal statute;

(B) the application of any Federal or State statute (except as provided in paragraph (2)), including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, service, or interest—

(i) that is not conducted on or subject to the rules of a registered entity or exempt board of trade;

(ii) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, its territories or possessions; or

(iii) that is not subject to regulation by the Commission under section 6c or 23 of this title; or

(C) the application of any Federal or State statute, including any rule or regulation thereunder, to any person required to be registered or designated under this chapter who shall fail or refuse to obtain such registration or designation.

(2) This chapter shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of—

(A) an electronic trading facility excluded under section 2(e) of this title; and

(B) an agreement, contract, or transaction that is excluded from this chapter under section 2(c), 2(d), 2(f), or 2(g) of this title or sections 27 to 27f of this title, or exempted under section 2(h) or 6(c) of this title (regardless of whether any such agreement, contract, or transaction is otherwise subject to this chapter).

(f) Investigative assistance to foreign futures authorities

(1) On request from a foreign futures authority, the Commission may, in its discretion, pro-

vide assistance in accordance with this section if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws, rules or regulations relating to futures or options matters that the requesting authority administers or enforces. The Commission may conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States.

(2) In deciding whether to provide assistance under this subsection, the Commission shall consider whether—

(A) the requesting authority has agreed to provide reciprocal assistance to the Commission in futures and options matters; and

(B) compliance with the request would prejudice the public interest of the United States.

(3) Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign futures authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation, or in providing any other assistance to a foreign futures authority, pursuant to this section. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) Computerized futures trading

Consistent with its responsibilities under section 22 of this title, the Commission is directed to facilitate the development and operation of computerized trading as an adjunct to the open outcry auction system. The Commission is further directed to cooperate with the Office of the United States Trade Representative, the Department of the Treasury, the Department of Commerce, and the Department of State in order to remove any trade barriers that may be imposed by a foreign nation on the international use of electronic trading systems.

(Sept. 21, 1922, ch. 369, § 12, 42 Stat. 1003; Pub. L. 93-463, title I, § 101(b), Oct. 23, 1974, 88 Stat. 1391; Pub. L. 95-405, § 20, Sept. 30, 1978, 92 Stat. 875; Pub. L. 97-444, title II, §§ 228, 229, Jan. 11, 1983, 96 Stat. 2318; Pub. L. 99-641, title I, § 106, Nov. 10, 1986, 100 Stat. 3558; Pub. L. 102-546, title II, §§ 216, 220(a), title III, §§ 302, 303, title IV, § 401, title V, § 502(c), Oct. 28, 1992, 106 Stat. 3611, 3614, 3622, 3624, 3631; Pub. L. 104-9, § 2, Apr. 21, 1995, 109 Stat. 154; Pub. L. 106-554, § 1(a)(5) [title I, §§ 116, 117], Dec. 21, 2000, 114 Stat. 2763, 2763A-402.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106-554, § 1(a)(5) [title I, § 116], substituted “2005” for “2000”.

Subsec. (e). Pub. L. 106-554, § 1(a)(5) [title I, § 117], added subsec. (e) and struck out former subsec. (e) which provided that this chapter did not supersede or preempt criminal prosecutions under Federal criminal statutes or the application of any Federal or State statute to certain specified transactions and persons.

1995—Subsec. (d). Pub. L. 104-9 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as fol-

lows: “There are authorized to be appropriated to carry out this chapter—

“(1) \$53,000,000 for fiscal year 1993; and

“(2) \$60,000,000 for fiscal year 1994.”

1992—Subsec. (a). Pub. L. 102-546, § 302, inserted “any foreign futures authority, any department or agency of a foreign government or political subdivision thereof,” after “thereof.”

Subsec. (b). Pub. L. 102-546, § 216, designated first through third sentences as pars. (1) to (3), respectively, and added par. (4).

Subsec. (d). Pub. L. 102-546, § 401, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “There are authorized to be appropriated to carry out this chapter such sums as may be necessary for each of the fiscal years during the period beginning October 1, 1986, and ending September 30, 1989.”

Subsec. (e)(2)(A). Pub. L. 102-546, § 502(c), inserted “or, in the case of any State or local law that prohibits or regulates gaming or the operation of ‘bucket shops’ (other than antifraud provisions of general applicability), that is not a transaction or class of transactions that has received or is covered by the terms of any exemption previously granted by the Commission under subsection (c) of section 6 of this title,” after “market.”

Subsec. (f). Pub. L. 102-546, § 303, added subsec. (f).

Subsec. (g). Pub. L. 102-546, § 220(a), added subsec. (g).

1986—Subsec. (d). Pub. L. 99-641 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “There are authorized to be appropriated to carry out the provisions of this chapter such sums as may be required for each of the fiscal years during the period beginning October 1, 1982, and ending September 30, 1986.”

1983—Subsec. (d). Pub. L. 97-444, § 228, substituted appropriation authorization for fiscal years during period beginning Oct. 1, 1982, and ending Sept. 30, 1986, for prior authorization for fiscal years during period beginning Oct. 1, 1978, and ending Sept. 30, 1982.

Subsec. (e). Pub. L. 97-444, § 229, added subsec. (e).

1978—Subsec. (d). Pub. L. 95-405 substituted “for each of the fiscal years during the period beginning October 1, 1978, and ending September 30, 1982” for “for the fiscal year ending June 30, 1975, for the fiscal year ending June 30, 1976, for the fiscal year ending June 30, 1977, and for the fiscal year ending June 30, 1978”.

1974—Pub. L. 93-463 designated existing unlettered provisions as subsecs. (a) to (d), substituted “Commission” for “Secretary of Agriculture”, inserted provisions authorizing the expenditure of funds for expenses upon the presentation of itemized vouchers therefor approved by the Commission, substituted provisions authorizing appropriations specifically for fiscal years ending June 30, 1975, 1976, 1977, and 1978, for provisions making a general authorization of appropriations without a fiscal year limitation, and inserted authorization to enter into contracts and compensate experts and consultants in accordance with section 3109 of title 5 at rates not in excess of the maximum daily rate prescribed for GS-18 under section 5332 of title 5.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General

Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 16a. Service fees and National Futures Association study

(a) Development and implementation of plan for user fees; report to and approval by Congressional committees

Notwithstanding any other provision of law, the Commodity Futures Trading Commission may develop and implement a plan to charge and collect reasonable fees to cover the estimated cost of regulating transactions under the jurisdiction of the Commission. However, prior to implementing such a plan, the Commission shall report its intention to do so to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. The Commission shall include in its report the feasibility and desirability of collecting such fees. Any plan developed under this section shall not be implemented until approved by the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. Fees collected under any plan approved under this section shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) National Futures Association regulatory experience; report; contents

The Commodity Futures Trading Commission shall submit to Congress a report containing the results of a study of the regulatory experience of the National Futures Association for the period beginning January 1, 1983 and ending September 30, 1985. The report shall be submitted not later than January 1, 1986. The report shall include (but not be limited to) the following—

- (1) the extent to which the National Futures Association has fully implemented the program provided in the rules approved by the Commission under section 17(p) and (q) of the Commodity Exchange Act [7 U.S.C. 21(p), (q)] and the effectiveness of the operation of such program;
- (2) the actual and projected cost savings to the Federal Government, if any, resulting from operations of the National Futures Association;
- (3) the actual and projected costs which the Commission and the public would have incurred if the Association had not undertaken self-regulatory responsibility for certain areas under the Commission's jurisdiction;
- (4) problem areas, if any, encountered by the Association;
- (5) the nature of the working relationship between the Association and the Commission;
- (6) an assessment of the actual and projected efficiencies the Commission has achieved or expects to be achieved as a result of the continuing regulatory activities of the Association; and
- (7) the immediate and projected capabilities of the Commission at the time of submission of the study to turn its attention to more immediate problems of regulation, as a result of the activities of the Association.

(c) Schedule of fees for services, activities and functions; notice and hearing; actual cost standard

Nothing in this section shall limit the authority of the Commission to promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act [7 U.S.C. 1 et seq.]: *Provided*, That the fees for any specified service or activity or function shall not exceed the actual cost thereof to the Commission.

(Pub. L. 95-405, § 26, Sept. 30, 1978, 92 Stat. 877; Pub. L. 97-444, title II, § 237, Jan. 11, 1983, 96 Stat. 2325.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (c), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§ 1 et seq.) of this title. For complete classification of this Act to the Code, see section 1 of this title and Tables.

CODIFICATION

Section was enacted as part of the Futures Trading Act of 1978, and not as part of the Commodity Exchange Act which comprises this chapter.

AMENDMENTS

1983—Pub. L. 97-444 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

STUDY OF ASSESSMENTS ON TRANSACTIONS

Pub. L. 102-546, title II, § 218, Oct. 28, 1992, 106 Stat. 3612, provided that:

“(a) STUDY.—The Comptroller General of the United States shall conduct a study to determine whether—

“(1) it is feasible to fund some or all of the enforcement and market surveillance activities of the Commodity Futures Trading Commission, as required by the amendments to the Commodity Exchange Act made by the Futures Trading Practices Act of 1992 [see Short Title of 1992 Amendment note set out under section 1 of this title], through the imposition of an assessment on commodity futures and options transactions executed pursuant to the Commodity Exchange Act [7 U.S.C. 1 et seq.]; and

“(2) a program of assessment-based funding for some or all of such enforcement and market surveillance activities would better provide resources to the Commodity Futures Trading Commission to enable the Commission to—

“(A) protect the interests of market users (including hedgers and speculators), producers of commodities traded on the futures markets, and the general public; and

“(B) maintain and enhance the credibility of such futures and options markets.

“(b) REPORT.—Not later than one year after the date of enactment of this Act [Oct. 28, 1992], the Comptroller General shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a re-

port containing the Comptroller General's determinations pursuant to subsection (a), together with any appropriate recommendations for the implementation of such a program of assessment-based funding for some or all of the Commodity Futures Trading Commission's enforcement and market surveillance activities."

§ 17. Separability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the chapter and of the application of such provision to other persons and circumstances shall not be affected thereby.

(Sept. 21, 1922, ch. 369, § 10, 42 Stat. 1003.)

§ 17a. Separability of 1936 amendment

If any provision of the act of June 15, 1936, ch. 545, 49 Stat. 1491, which amends this chapter, or the application thereof to any person or circumstances is held invalid, the provisions of the section of this chapter which is amended by such provision of said act shall apply to such person or circumstances. No proceeding shall be abated by reason of any amendment to this chapter made by said act but shall be disposed of pursuant to said act.

(June 15, 1936, ch. 545, § 12, 49 Stat. 1501.)

CODIFICATION

Section was not enacted as part of the Commodity Exchange Act which comprises this chapter.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 17b. Separability of 1968 amendment

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby, and the provisions of the section of this chapter which is amended by such provision of this Act shall apply to such person or circumstances. Pending proceedings shall not be abated by reason of any provision of this Act but shall be disposed of pursuant to the provisions of this chapter, in effect prior to the effective date of this Act.

(Pub. L. 90-258, § 27, Feb. 19, 1968, 82 Stat. 34.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 90-258, Feb. 19, 1968, 82 Stat. 26. For complete classification of this Act to the Code, see Tables.

Effective date of this Act, referred to in text, as one hundred and twenty days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

CODIFICATION

Section was not enacted as part of the Commodity Exchange Act which comprises this chapter.

§ 18. Complaints against registered persons

(a) Petition for actual damages

(1) Any person complaining of any violation of any provision of this chapter, or any rule, regu-

lation, or order issued pursuant to this chapter, by any person who is registered under this chapter may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding—

(A) actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

(B) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a registered entity, punitive or exemplary damages equal to no more than two times the amount of such actual damages. If an award of punitive or exemplary damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

(2)(A) An action may be brought under this subsection by any one or more persons described in this subsection for and in behalf of such person or persons and other persons similarly situated, if the Commission permits such actions pursuant to a final rule issued by the Commission.

(B) Not later than two hundred and seventy days after October 28, 1992, the Commission shall propose and publish for public comment such rules as are necessary to carry out subparagraph (A). In developing such rules, the Commission shall consider the potential impact of such actions on resources available to the reparations system established under this chapter and the relative merits of bringing such actions in Federal court.

(b) Rules and regulations; control over right of appeal

The Commission may promulgate such rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section. Notwithstanding any other provision of law, such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing, and service of pleadings or orders, the nature and scope of discovery, counterclaims, motion practice (including the grounds for dismissal of any claim or counterclaim), hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.

(c) Bond requirement when complainant is non-resident; waiver

In case a complaint is made by a nonresident of the United States, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Commission against the complainant on any counterclaim by respondent: *Provided*, That the Commission shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the furnishing of a bond.

(d) Enforcement of reparation award

If any person against whom an award has been made does not pay the reparation award within the time specified in the Commission's order, the complainant, or any person for whose benefit such order was made, within three years of the date of the order, may file a certified copy of the order of the Commission, in the district court of the United States for the district in which he resides or in which is located the principal place of business of the respondent, for enforcement of such reparation award by appropriate orders. The orders, writs, and processes of such district court may in such case run, be served, and be returnable anywhere in the United States. The petitioner shall not be liable for costs in the district court, nor for costs at any subsequent state of the proceedings, unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. Subject to the right of appeal under subsection (e) of this section, an order of the Commission awarding reparations shall be final and conclusive.

(e) Review

Any order of the Commission entered hereunder shall be reviewable on petition of any party aggrieved thereby, by the United States Court of Appeals for any circuit in which a hearing was held, or if no hearing was held, any circuit in which the appellee is located, under the procedure provided in sections 9 and 15 of this title. Such appeal shall not be effective unless within 30 days from and after the date of the reparation order the appellant also files with the clerk of the court a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States. The appellee shall not be liable for costs in said court. If the appellee prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs.

(f) Automatic bar from trading and suspension for noncompliance; effect of appeal

Unless the party against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that either an appeal as herein authorized has been taken or payment of the full amount of the order (or any agreed settlement thereof) has been made, such party shall be prohibited automatically from trading on all registered entities and, if the party is registered with the Commission, such registration shall be suspended automatically at the expiration of such fifteen-day period until such party shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made: *Provided*, That if on appeal the appellee prevails or if the appeal is dismissed, the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction, the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.

(g) Predispute resolution agreements for institutional customers

Nothing in this section prohibits a registered futures commission merchant from requiring a customer that is an eligible contract participant, as a condition to the commission merchant's conducting a transaction for the customer, to enter into an agreement waiving the right to file a claim under this section.

(Sept. 21, 1922, ch. 369, §14, as added Pub. L. 93-463, title I, §106, Oct. 23, 1974, 88 Stat. 1393; amended Pub. L. 94-16, §3, Apr. 16, 1975, 89 Stat. 77; Pub. L. 95-405, §21, Sept. 30, 1978, 92 Stat. 875; Pub. L. 97-444, title II, §231, Jan. 11, 1983, 96 Stat. 2319; Pub. L. 102-546, title II, §§209(b)(7), 222(b), 224, title IV, §402(11), Oct. 28, 1992, 106 Stat. 3607, 3615, 3617, 3625; Pub. L. 106-554, §1(a)(5) [title I, §§118, 123(a)(23)], Dec. 21, 2000, 114 Stat. 2763, 2763A-403, 2763A-410.)

AMENDMENTS

2000—Subsec. (a)(1)(B). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(23)(A)], substituted "registered entity" for "contract market".

Subsec. (f). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(23)(B)], substituted "registered entities" for "contract markets".

Subsec. (g). Pub. L. 106-554, §1(a)(5) [title I, §118], added subsec. (g) and struck out former subsec. (g) which read as follows: "The provisions of this section shall not become effective until fifteen months after October 23, 1974: *Provided*, That claims which arise within one year immediately prior to the effective date of this section may be heard by the Commission after such 15-month period."

1992—Subsec. (a). Pub. L. 102-546, §224, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Pub. L. 102-546, §222(b), substituted "awarding—" and pars. (1) and (2) for "awarding actual damages proximately caused by such violation."

Subsec. (e). Pub. L. 102-546, §209(b)(7), made technical amendment to reference to sections 9 and 15 of this

title to reflect change in reference to corresponding section of original act.

Subsec. (g). Pub. L. 102-546, §402(11), substituted “15-month” for second reference to “fifteen months”.

1983—Subsec. (a). Pub. L. 97-444, §231(1), substituted provisions relating to complaints against violations by persons “registered under this chapter” for provisions relating to complaints against persons “registered or required to be registered under section 6d, 6e, 6j, or 6m of this title”, and substituted provisions for application to Commission for an award of actual damages caused by such violation, for provisions authorizing application to Commission by petition, and forwarding of complaint, if warranted, to respondent for satisfaction or answer.

Subsec. (b). Pub. L. 97-444, §231(2), substituted provisions relating to promulgation by Commission of rules, regulations, and orders necessary or appropriate for administration of this section, including rules of practice and procedure governing proceedings before the Commission, for provisions relating to investigation and service of complaint by Commission, and hearing thereon before an Administrative Law Judge, except that where amount claimed as damages did not exceed \$5,000, hearing need not be held, and proofs could be supplied by deposition or verified statements of fact.

Subsec. (c). Pub. L. 97-444, §231(3), (4), redesignated subsec. (d) as (c). Former subsec. (c), which provided that after opportunity for hearing on complaints where the damages claimed exceeded the sum of \$5,000 had been provided or waived and on complaints where damages claimed did not exceed the sum of \$5,000 not requiring hearing as provided herein, Commission would determine whether or not the respondent had violated any provision of this chapter or any rule, regulation, or order thereunder, was struck out.

Subsec. (d). Pub. L. 97-444, §231(4), (5), redesignated subsec. (f) as (d) and substituted “subsection (e)” for “subsection (g)”. Former subsec. (d) was redesignated (c).

Subsec. (e). Pub. L. 97-444, §231(3), (4), redesignated subsec. (g) as (e). Former subsec. (e), which provided that if, after a hearing on a complaint made by any person under subsection (a) of this section, or without hearing as provided in subsections (b) and (c) of this section, or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified, the Commission determined that the respondent had violated any provision of this chapter, or any rule, regulation, or order thereunder, the Commission would unless the offender had already made reparation to the person complaining, determine the amount of damage, if any, to which such person was entitled as a result of such violation and would make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order, and that if, after the respondent had filed his answer to the complaint, it appeared therein that the respondent had admitted liability for a portion of the amount claimed in the complaint as damages, the Commission under such rules and regulations as it would prescribe, unless the respondent had already made reparation to the person complaining, could issue an order directing the respondent to pay to the complainant the undisputed amount on or before the date fixed in the order, leaving the respondent's liability for the disputed amount for subsequent determination, with the remaining disputed amount to be determined in the same manner and under the same procedure as it would have been determined if no order had been issued by the Commission with respect to the undisputed sum, was struck out.

Subsec. (f). Pub. L. 97-444, §231(4), (6), redesignated subsec. (h) as (f), made certain grammatical changes, and inserted provision allowing party against whom a reparation order has been issued to show compliance by payment of the full amount of the order or any agreed settlement thereof.

Subsecs. (g) to (i). Pub. L. 97-444, §231(4), redesignated subsecs. (g), (h), and (i), as (e), (f), and (g), respectively.

1978—Subsec. (a). Pub. L. 95-405, §21(1), substituted “who is registered or required to be registered” for “registered”.

Subsecs. (b), (c). Pub. L. 95-405, §21(2), (3), substituted “\$5,000” for “\$2,500” wherever appearing.

1975—Subsec. (i). Pub. L. 94-16 substituted “fifteen months” for “one year” in two places, and “one year” for “nine months”.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective 120 days after Jan. 11, 1983, or such earlier date as the Commission shall prescribe by regulation, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

§ 19. Consideration of costs and benefits and antitrust laws

(a) Costs and benefits

(1) In general

Before promulgating a regulation under this chapter or issuing an order (except as provided in paragraph (3)), the Commission shall consider the costs and benefits of the action of the Commission.

(2) Considerations

The costs and benefits of the proposed Commission action shall be evaluated in light of—

- (A) considerations of protection of market participants and the public;
- (B) considerations of the efficiency, competitiveness, and financial integrity of futures markets;
- (C) considerations of price discovery;
- (D) considerations of sound risk management practices; and
- (E) other public interest considerations.

(3) Applicability

This subsection does not apply to the following actions of the Commission:

- (A) An order that initiates, is part of, or is the result of an adjudicatory or investigative process of the Commission.
- (B) An emergency action.
- (C) A finding of fact regarding compliance with a requirement of the Commission.

(b) Antitrust laws

The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anti-competitive means of achieving the objectives of this chapter, as well as the policies and purposes of this chapter, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 6(c) or 6c(b) of this title), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 21 of this title.

(Sept. 21, 1922, ch. 369, §15, as added Pub. L. 93-463, title I, §107, Oct. 23, 1974, 88 Stat. 1395; amended Pub. L. 102-546, title V, §502(b), Oct. 28, 1992, 106 Stat. 3631; Pub. L. 106-554, §1(a)(5) [title I, §119], Dec. 21, 2000, 114 Stat. 2763, 2763A-403.)

AMENDMENTS

2000—Pub. L. 106-554 inserted section catchline, added subsec. (a), designated existing provisions as subsec. (b), and inserted subsec. (b) heading.

1992—Pub. L. 102-546 substituted “regulation (including any exemption under section 6(c) or 6c(b) of this title)” for “regulation”.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§ 20. Market reports

(a) Information

The Commission may conduct regular investigations of the markets for goods, articles, services, rights, and interests which are the subject of futures contracts, and furnish reports of the findings of these investigations to the public on a regular basis. These market reports shall, where appropriate, include information on the supply, demand, prices, and other conditions in the United States and other countries with respect to such goods, articles, services, rights, interests, and information respecting the futures markets.

(b) Avoidance of duplication

The Commission shall cooperate with the Department of Agriculture and any other Department or Federal agency which makes market investigations to avoid unnecessary duplication of information-gathering activities.

(c) Furnishing of information; confidentiality

The Department of Agriculture and any other Department or Federal agency which has market information sought by the Commission shall furnish it to the Commission upon the request of any authorized employee of the Commission. The Commission shall abide by any rules of confidentiality applying to such information.

(d) Disclosure of business transactions, market positions, trade secrets, or names of customers

The Commission shall not disclose in such reports data and information which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers except as provided in section 12 of this title.

(e) Application

This section shall not apply to investigations involving any security underlying a security futures product.

(Sept. 21, 1922, ch. 369, §16, as added Pub. L. 93-463, title IV, §414, Oct. 23, 1974, 88 Stat. 1414; amended Pub. L. 97-444, title II, §232, Jan. 11, 1983, 96 Stat. 2320; Pub. L. 106-554, §1(a)(5) [title II, §251(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A-443.)

AMENDMENTS

2000—Subsec. (e). Pub. L. 106-554 added subsec. (e).

1983—Subsec. (d). Pub. L. 97-444 prohibited disclosure of market positions.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

STUDY OF TRADING IN CATTLE FUTURES CONTRACTS

Pub. L. 99-641, title I, §111, Nov. 10, 1986, 100 Stat. 3561, provided that:

“(a) STUDY.—The Comptroller General of the United States shall conduct and complete a comprehensive study of the effect of trading in contracts for the future delivery of live cattle on the cash market price of live cattle, with particular emphasis on—

“(1) whether the reaction of the live cattle futures market to the results of the milk production termination program in March 1986, conducted under section 201(d)(3) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)(3)), was based on and accurately reflected the then prevailing conditions of supply and demand;

“(2) the effect of the trading in contracts for the future delivery of live cattle on—

“(i) the price relationship between feeder cattle and fed cattle;

“(ii) the price discovery process with respect to live cattle; and

“(iii) price competition within the cattle industry;

“(3) the effect of the use of packer contracts, as a means of obtaining slaughter cattle, on the increase in short hedging in contracts for the future delivery of live cattle and the effect of this increase in short hedging on prices in the futures and cash markets;

“(4) the effect on the ability of the cash markets to accurately reflect prevailing conditions of supply and demand if packer contracts become the prevalent method of marketing fed cattle;

“(5) whether the present delivery system for contracts for the future delivery of live cattle creates any bias (either upward or downward) in the cash price for cattle;

“(6) whether the present delivery system for contracts for the future delivery of live cattle creates price volatility during the delivery month; and

“(7) whether there are advantages or disadvantages to a cash settlement system in lieu of the present delivery system in the case of contracts for the future delivery of live cattle.

“(b) REPORTS.—

“(1) PRELIMINARY REPORT.—Not later than January 15, 1987, the Comptroller General shall submit a preliminary report on the results of the study required under subsection (a) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

“(2) FINAL REPORT.—Not later than 1 year after the date of enactment of this Act [Nov. 10, 1986], the Comptroller General shall submit to such committees a detailed final report of the results of the study required under subsection (a).”

POTATO FUTURES STUDY; SUBMISSION OF REPORT TO CONGRESS

Pub. L. 95-405, §27, Sept. 30, 1978, 92 Stat. 877, required, within one year of Oct. 1, 1978, Secretary of Agriculture to (1) conduct a comprehensive study of marketing of Irish potatoes and of making and trading of contracts of sale for future delivery of Irish potatoes, including rules and regulations pertaining to such trading issued by Commodity Futures Trading Commission or any contract market designated by Commission; and (2) submit to each House of Congress a detailed report on results of such study, and that report should also include any proposals Secretary may have concerning any legislation needed to implement such recommendations and concerning any modifications and rules and regulations needed to improve regulation of such contracts by Commission or any contract market designated by Commission.

§ 21. Registered futures associations

(a) Registration statement

Any association of persons may be registered with the Commission as a registered futures as-

sociation pursuant to subsection (b) of this section, under the terms and conditions hereinafter provided in this section, by filing with the Commission for review and approval a registration statement in such form as the Commission may prescribe, setting forth the information, and accompanied by the documents, below specified:

(1) Data as to its organization, membership, and rules of procedure, and such other information as the Commission may by rules and regulations require as necessary or appropriate in the public interest; and

(2) Copies of its constitution, charter, or articles of incorporation or association, with all amendments thereto, and of its bylaws, and of any rules or instruments corresponding to the foregoing, whatever the name, hereinafter in this section collectively referred to as the "rules of the association".

(b) Standards for registration; Commission findings

An applicant association shall not be registered as a futures association unless the Commission finds, under standards established by the Commission, that—

(1) such association is in the public interest and that it will be able to comply with the provisions of this section and the rules and regulations thereunder and to carry out the purposes of this section;

(2) the rules of the association provide that any person registered under this chapter, registered entity, or any other person designated pursuant to the rules of the Commission as eligible for membership may become a member of such association, except such as are excluded pursuant to paragraph (3) or (4) of this subsection, or a rule of the association permitted under this subparagraph. The rules of the association may restrict membership in such association on such specified basis relating to the type of business done by its members, or on such other specified and appropriate basis, as appears to the Commission to be necessary or appropriate in the public interest and to carry out the purpose of this section. Rules adopted by the association may provide that the association may, unless the Commission directs otherwise in cases in which the Commission finds it appropriate in the public interest so to direct, deny admission to, or refuse to continue in such association any person if (i) such person, whether prior or subsequent to becoming registered as such, or (ii) any person associated within the meaning of "associated person" as set forth in section 6k of this title, whether prior or subsequent to becoming so associated, has been and is suspended or expelled from a registered entity or has been and is barred or suspended from being associated with all members of such registered entity, for violation of any rule of such registered entity;

(3) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no person shall be admitted to or continued in membership in such association, if such person—

(A) has been and is suspended or expelled from a registered futures association or from a registered entity or has been and is barred or suspended from being associated with all members of such association or from being associated with all members of such registered entity, for violation of any rule of such association or registered entity which prohibits any act or transaction constituting conduct inconsistent with just and equitable principles of trade, or requires any act the omission of which constitutes conduct inconsistent with just and equitable principles of trade;

(B) is subject to an order of the Commission denying, suspending, or revoking his registration pursuant to sections 9 and 15 of this title, or expelling or suspending him from membership in a registered futures association or a registered entity, or barring or suspending him from being associated with a futures commission merchant;

(C) whether prior or subsequent to becoming a member, by his conduct while associated with a member, was a cause of any suspension, expulsion, or order of the character described in clause (A) or (B) which is in effect with respect to such member, and in entering such a suspension, expulsion, or order, the Commission or any such registered entity or association shall have jurisdiction to determine whether or not any person was a cause thereof; or

(D) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person who would be ineligible for admission to or continuance in membership under clause (A), (B), or (C) of this paragraph;

(4) the rules of the association provide that, except with the approval or at the direction of the Commission in cases in which the Commission finds it appropriate in the public interest so to approve or direct, no person shall become a member and no natural person shall become a person associated with a member, unless such person is qualified to become a member or a person associated with a member in conformity with specified and appropriate standards with respect to the training, experience, and such other qualifications of such person as the association finds necessary or desirable, and in the case of a member, the financial responsibility of such a member. For the purpose of defining such standards and the application thereof, such rules may—

(A) appropriately classify prospective members (taking into account relevant matters, including type or nature of business done) and persons proposed to be associated with members;

(B) specify that all or any portion of such standard shall be applicable to any such class;

(C) require persons in any such class to pass examinations prescribed in accordance with such rules;

(D) provide that persons in any such class other than prospective members and partners, officers and supervisory employees (which latter term may be defined by such

rules and as so defined shall include branch managers of members) of members, may be qualified solely on the basis of compliance with specified standards of training and such other qualifications as the association finds appropriate;

(E) provide that applications to become a member or a person associated with a member shall set forth such facts as the association may prescribe as to the training, experience, and other qualifications (including, in the case of an applicant for membership, financial responsibility) of the applicant and that the association shall adopt procedures for verification of qualifications of the applicant, which may require the applicant to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing. Notwithstanding any other provision of law, such an association may receive from the Attorney General all the results of such identification and processing; and

(F) require any class of persons associated with a member to be registered with the association in accordance with procedures specified by such rules (and any application or document supplemental thereto required by such rules of a person seeking to be registered with such association shall, for the purposes of sections 9 and 15 of this title, be deemed an application required to be filed under this section);

(5) the rules of the association assure a fair representation of its members in the adoption of any rule of the association or amendment thereto, the selection of its officers and directors, and in all other phases of the administration of its affairs;

(6) the rules of the association provide for the equitable allocation of dues among its members, to defray reasonable expenses of administration;

(7) the rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, in general, to protect the public interest, and to remove impediments to and perfect the mechanism of free and open futures trading;

(8) the rules of the association provide that its members and persons associated with its members shall be appropriately disciplined, by expulsion, suspension, fine, censure, or being suspended or barred from being associated with all members, or any other fitting penalty, for any violation of its rules;

(9) the rules of the association provide a fair and orderly procedure with respect to the disciplining of members and persons associated with members and the denial of membership to any person seeking membership therein or the barring of any person from being associated with a member. In any proceeding to determine whether any member or other person shall be disciplined, such rules shall require that specific charges be brought; that such member or person shall be notified of, and be given an opportunity to defend against, such charges; that a record shall be kept; and that the determination shall include—

(A) a statement setting forth any act or practice in which such member or other person may be found to have engaged, or which such member or other person may be found to have omitted;

(B) a statement setting forth the specific rule or rules of the association of which any such act or practice, or omission to act, is deemed to be in violation;

(C) a statement whether the acts or practices prohibited by such rule or rules, or the omission of any act required thereby, are deemed to constitute conduct inconsistent with just and equitable principles of trade; and

(D) a statement setting forth the penalty imposed;¹

In any proceeding to determine whether a person shall be denied membership or whether any person shall be barred from being associated with a member, such rules shall provide that the person shall be notified of, and be given an opportunity to be heard upon, the specific grounds for denial or bar which are under consideration; that a record shall be kept; and that the determination shall set forth the specific grounds upon which the denial or bar is based;

(10) the rules of the association provide a fair, equitable, and expeditious procedure through arbitration or otherwise for the settlement of customers' claims and grievances against any member or employee thereof: *Provided*, That (A) the use of such procedure by a customer shall be voluntary, (B) the term "customer" as used in this paragraph shall not include another member of the association, and (C) in the case of a claim arising from a violation in the execution of an order on the floor of a registered entity, such procedure shall provide, to the extent appropriate—

(i) for payment of actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

(ii) where the violation is willful and intentional, for payment to the customer of punitive or exemplary damages, in addition to losses proximately caused by the violation, in an amount equal to no more than two times the amount of such losses. If punitive or exemplary damages are awarded against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of such order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy the award of punitive or exemplary damages if the floor

¹ So in original. The semicolon probably should be a period.

broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation; and²

(11) such association provides for meaningful representation on the governing board of such association of a diversity of membership interests and provides that no less than 20 percent of the regular voting members of such board be comprised of qualified nonmembers or persons who are not regulated by such association.³

(12)(A)⁴ such association provides on all major disciplinary committees for a diversity of membership sufficient to ensure fairness and to prevent special treatment or preference for any person in the conduct of disciplinary proceedings and the assessment of penalties.⁵

(13) A⁶ major disciplinary committee hearing a disciplinary matter shall include—

(A) qualified persons representing segments of the association membership other than that of the subject of the proceeding; and

(B) where appropriate to carry out the purposes of this paragraph, qualified persons who are not members of the association.

(c) Suspension of registration

The Commission may, after notice and opportunity for hearing, suspend the registration of any futures association if it finds that the rules thereof do not conform to the requirements of the Commission, and any such suspension shall remain in effect until the Commission issues an order determining that such rules have been modified to conform with such requirements.

(d) Fees and charges

In addition to the fees and charges authorized by section 12a(1) of this title, each person registered under this chapter, who is not a member of a futures association registered pursuant to this section, shall pay to the Commission such reasonable fees and charges as may be necessary to defray the costs of additional regulatory duties required to be performed by the Commission because such person is not a member of a registered futures association. The Commission shall establish such additional fees and charges by rules and regulations.

(e) Registered persons not members of registered associations

Any person registered under this chapter, who is not a member of a futures association registered pursuant to this section, in addition to the other requirements and obligations of this chapter and the regulations thereunder shall be subject to such other rules and regulations as the Commission may find necessary to protect the public interest and promote just and equitable principles of trade.

(f) Denial of registration

Upon filing of an application for registration pursuant to subsection (a) of this section, the Commission may by order grant such registration if the requirements of this section are satisfied. If, after appropriate notice and opportunity for hearing, it appears to the Commission that any requirement of this section is not satisfied, the Commission shall by order deny such registration.

(g) Withdrawal from registration; notice of withdrawal

A registered futures association may, upon such reasonable notice as the Commission may deem necessary in the public interest, withdraw from registration by filing with the Commission a written notice of withdrawal in such form as the Commission may by rules and regulations prescribe.

(h) Commission review of disciplinary actions taken by registered futures associations

(1) If any registered futures association takes any final disciplinary action against a member of the association or a person associated with a member, denies admission to any person seeking membership therein, or bars any person from being associated with a member, the association promptly shall give notice thereof to such member or person and file notice thereof with the Commission. The notice shall be in such form and contain such information as the Commission, by rule or regulation, may prescribe as necessary or appropriate to carry out the purposes of this chapter.

(2) Any action with respect to which a registered futures association is required by paragraph (1) to file notice shall be subject to review by the Commission on its motion, or on application by any person aggrieved by the action. Such application shall be filed within 30 days after the date such notice is filed with the Commission and received by the aggrieved person, or within such longer period as the Commission may determine.

(3)(A) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such action unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments).

(B) The Commission shall establish procedures for expedited consideration and determination of the question of a stay.

(i) Notice; hearing; findings; cancellation, reduction, or remission of penalties; review by court of appeals

(1) In a proceeding to review a final disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction imposed by the association)—

² So in original. The word "and" probably should not appear.

³ So in original. The period probably should be a semicolon.

⁴ So in original. No subpar. (B) has been enacted.

⁵ So in original. The period probably should be "; and".

⁶ So in original. Probably should not be capitalized.

(A) if the Commission finds that—

(i) the member or person associated with a member has engaged in the acts or practices, or has omitted the acts, that the association has found the member or person to have engaged in or omitted;

(ii) the acts or practices, or omissions to act, are in violation of the rules of the association specified in the determination of the association; and

(iii) such rules are, and were applied in a manner, consistent with the purposes of this chapter,

the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the association, modify the sanction in accordance with paragraph (2), or remand the case to the association for further proceedings; or

(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the sanction imposed by the association and, if appropriate, remand the case to the association for further proceedings.

(2) If, after a proceeding under paragraph (1), the Commission finds that any penalty imposed on a member or person associated with a member is excessive or oppressive, having due regard for the public interest, the Commission, by order, shall cancel, reduce, or require the remission of the penalty.

(3) In a proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, after appropriate notice and opportunity for a hearing (which hearing may consist solely of consideration of the record before the association and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the action of the association)—

(A) if the Commission finds that—

(i) the specific grounds on which the denial or bar is based exist in fact;

(ii) the denial or bar is in accordance with the rules of the association; and

(iii) such rules are, and were applied in a manner, consistent with the purposes of this chapter,

the Commission, by order, shall so declare and, as appropriate, affirm or modify the action of the association, or remand the case to the association for further proceedings; or

(B) if the Commission does not make any such finding, the Commission, by order, shall set aside the action of the association and require the association to admit the applicant to membership or permit the person to be associated with a member, or, as appropriate, remand the case to the association for further proceedings.

(4) Any person aggrieved by a final order of the Commission entered under this subsection may file a petition for review with a United States court of appeals in the same manner as provided in sections 9 and 15 of this title.

(j) Changes or additions to association rules

Every registered futures association shall file with the Commission in accordance with such

rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, copies of any changes in or additions to the rules of the association, and such other information and documents as the Commission may require to keep current or to supplement the registration statement and documents filed pursuant to subsection (a) of this section. A registered futures association shall submit to the Commission any change in or addition to its rules and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the registered futures association requests review and approval thereof by the Commission or the Commission notifies such registered futures association in writing of its determination to review such rules for approval. The Commission shall approve such rules if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this chapter or the regulations issued pursuant to this chapter, and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of this chapter or the regulations issued pursuant to this chapter. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period of time as the registered futures association may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the registered futures association may agree to, such rule may be made effective by the registered futures association until such time as the Commission disapproves such rule in accordance with this subsection.

(k) Abrogation of association rules; requests to associations by Commission to alter or supplement rules

(1) The Commission is authorized by order to abrogate any rule of a registered futures association, if after appropriate notice and opportunity for hearing, it appears to the Commission that such abrogation is necessary or appropriate to assure fair dealing by the members of such association, to assure a fair representation of its members in the administration of its affairs or effectuate the purposes of this section.

(2) The Commission may in writing request any registered futures association to adopt any specified alteration or supplement to its rules with respect to any of the matters hereinafter enumerated. If such association fails to adopt such alteration or supplement within a reasonable time, the Commission is authorized by order to alter or supplement the rules of such association in the manner theretofore requested, or with such modifications of such alteration or supplement as it deems necessary if, after appropriate notice and opportunity for hearing, it appears to the Commission that such alteration or supplement is necessary or appropriate in the public interest or to effectuate the purposes of this section, with respect to—

(A) the basis for, and procedure in connection with, the denial of membership or the barring from being associated with a member or the disciplining of members or persons associated with members, or the qualifications required for members or natural persons associated with members or any class thereof;

(B) the method for adoption of any change in or addition to the rules of the association;

(C) the method of choosing officers and directors.

(l) Suspension and revocation of registration; expulsion of members; removal of association officers or directors

The Commission is authorized, if such action appears to it to be necessary or appropriate in the public interest or to carry out the purposes of this section—

(1) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to revoke the registration of a registered futures association, if the Commission finds that such association has violated any provisions of this chapter or any rule or regulation thereunder, or has failed to enforce compliance with its own rules, or has engaged in any other activity tending to defeat the purposes of this chapter;

(2) after appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to expel from a registered futures association any member thereof, or to suspend for a period not exceeding twelve months or to bar any person from being associated with a member thereof, if the Commission finds that such member or person—

(A) has violated any provision of this chapter or any rule or regulation thereunder, or has effected any transaction for any other person who, he had reason to believe, was violating with respect to such transaction any provision of this chapter or any rule or regulation thereunder; or

(B) has willfully violated any provision of this chapter, or of any rule, regulation, or order thereunder, or has effected any transaction for any other person who, he had reason to believe, was willfully violating with respect to such transaction any provision of this chapter or rule, regulation, or order; and

(3) after appropriate notice and opportunity for hearing, by order to remove from office any officer or director of a registered futures association who, the Commission finds, has willfully failed to enforce the rules of the association, or has willfully abused his authority.

(m) Rules requiring membership in associations

Notwithstanding any other provision of law, the Commission may approve rules of futures associations that, directly or indirectly, require persons eligible for membership in such associations to become members of at least one such association, upon a determination by the Commission that such rules are necessary or appropriate to achieve the purposes and objectives of this chapter.

(n) Reports to Congress

The Commission shall include in its annual reports to Congress information concerning any futures associations registered pursuant to this section and the effectiveness of such associations in regulating the practices of the members.

(o) Delegation to futures associations of registrative functions; discretionary review by Commission; judicial appeal

(1) The Commission may require any futures association registered pursuant to this section to perform any portion of the registration functions under this chapter with respect to each member of the association other than a registered entity and with respect to each associated person of such member, in accordance with rules, notwithstanding any other provision of law, adopted by such futures association and submitted to the Commission pursuant to subsection (j) of this section, and subject to the provisions of this chapter applicable to registrations granted by the Commission.

(2) In performing any Commission registration function authorized by the Commission under section 12a(10) of this title, this section, or any other applicable provisions of this chapter, a futures association may issue orders (A) to refuse to register any person, (B) to register conditionally any person, (C) to suspend the registration of any person, (D) to place restrictions on the registration of any person, or (E) to revoke the registration of any person. If such an order is the final decision of the futures association, any person against whom the order has been issued may petition the Commission to review the decision. The Commission may on its own initiative or upon petition decline review or grant review and affirm, set aside, or modify such an order of the futures association; and the findings of the futures association as to the facts, if supported by the weight of the evidence, shall be conclusive. Unless the Commission grants review under this section of an order concerning registration issued by a futures association, the order of the futures association shall be considered to be an order issued by the Commission.

(3) Nothing in this section shall affect the Commission's authority to review the granting of a registration application by a registered futures association that is performing any Commission registration function authorized by the Commission under section 12a(10) of this title, this section, or any other applicable provision of this chapter.

(4) If a person against whom a futures association has issued a registration order under this subsection petitions the Commission to review that order and the Commission declines to take review, such person may file a petition for review with a United States court of appeals, in accordance with sections 9 and 15 of this title.

(p) Establishment of rules for futures associations; approval by Commission

Notwithstanding any other provision of this section, each futures association registered under this section on January 11, 1983, shall adopt and submit for Commission approval not later than ninety days after such date, and each

futures association that applies for registration after such date shall adopt and include with its application for registration, rules of the association that require the association to—

(1) establish training standards and proficiency testing for persons involved in the solicitation of transactions subject to the provisions of this chapter, supervisors of such persons, and all persons for which it has registration responsibilities, and a program to audit and enforce compliance with such standards;

(2) establish minimum capital, segregation, and other financial requirements applicable to its members for which such requirements are imposed by the Commission and implement a program to audit and enforce compliance with such requirements, except that such requirements may not be less stringent than those imposed on such firms by this chapter or by Commission regulation;

(3) establish minimum standards governing the sales practices of its members and persons associated therewith for transactions subject to the provisions of this chapter; and

(4) establish special supervisory guidelines to protect the public interest relating to the solicitation by telephone of new futures or options accounts and make such guidelines applicable to those members determined to require such guidelines in accordance with standards established by the Commission consistent with this chapter. Such guidelines may include a requirement that, with respect to a customer with no previous futures or commodity options trading experience, the member may not enter an order for the account of such customer for a period of three days following opening of the account and receipt of a signed acknowledgment by the customer of receipt of a risk disclosure statement.

(q) ⁷ Major disciplinary rule violations

(1) The Commission shall issue regulations requiring each registered futures association to establish and make available to the public a schedule of major violations of any rule within the disciplinary jurisdiction of such registered futures association.

(2) The regulations issued by the Commission pursuant to this subsection shall prohibit, for a period of time to be determined by the Commission, any member of a registered futures association who is found to have committed any major violation from service on the governing board of any registered futures association or registered entity, or on any disciplinary committee thereof.

(q) ⁷ Program for implementation of rules

Each futures association registered under this section shall develop a comprehensive program that fully implements the rules approved by the Commission under this section as soon as practicable but not later than September 30, 1985, in the case of any futures association registered on January 11, 1983, and not later than two and one-half years after the date of registration in the case of any other futures association registered under this section.

(r) Rules to avoid duplicative regulation of dual registrants

Consistent with this chapter, each futures association registered under this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 6f(a) of this title (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 78o(b) of title 15 (except paragraph (11) thereof), with respect to the application of—

(1) rules of such futures association of the type specified in section 6d(3) of this title involving security futures products; and

(2) similar rules of national securities associations registered pursuant to section 78o-3(a) of title 15 involving security futures products.

(Sept. 21, 1922, ch. 369, §17, as added Pub. L. 93-463, title III, §301, Oct. 23, 1974, 88 Stat. 1406; amended Pub. L. 95-405, §22, Sept. 30, 1978, 92 Stat. 876; Pub. L. 97-444, title II, §§217(b), 233, Jan. 11, 1983, 96 Stat. 2307, 2320; Pub. L. 99-641, title I, §§107, 108, 110(6), (7), Nov. 10, 1986, 100 Stat. 3558, 3559, 3561; Pub. L. 102-546, title II, §§204(a), 206(b), 209(b)(8), 222(c), 228, title IV, §402(12), Oct. 28, 1992, 106 Stat. 3600, 3602, 3607, 3616, 3619, 3625; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(24), title II, §251(g)], Dec. 21, 2000, 114 Stat. 2763, 2763A-410, 2763A-444.)

AMENDMENTS

2000—Subsecs. (b)(2), (3), (10). (o)(1), (q)(2). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(24)], substituted “registered entity” for “contract market” wherever appearing.

Subsec. (r). Pub. L. 106-554, §1(a)(5) [title II, §251(g)], added subsec. (r).

1992—Subsec. (a)(1), (2). Pub. L. 102-546, §402(12)(A), realigned margins.

Subsec. (b)(3). Pub. L. 102-546, §§206(b)(1)(A), (B), 209(b)(8)(A)(i), struck out “or” at end of subpar. (A), in subpar. (B) made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act and struck out “or” at end, and in subpar. (D) substituted a semicolon for period at end.

Subsec. (b)(4). Pub. L. 102-546, §§206(b)(1)(B), (C), 209(b)(8)(A)(ii), substituted a semicolon for period at end of subpars. (A) to (D), in subpar. (E) substituted “; and” for period at end, and in subpar. (F) made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act and substituted a semicolon for period at end.

Subsec. (b)(5) to (9). Pub. L. 102-546, §206(b)(1)(B), (C), substituted a semicolon for period at end of pars. (5) to (9) and subpars. (A), (B), and (D) of par. (9) and in par. (9)(C) substituted “; and” for period at end.

Subsec. (b)(10). Pub. L. 102-546, §§206(b)(1)(C), 222(c), substituted “(A)” for “(i)” and “voluntary, (B)” for “voluntary and (ii)”, inserted “, and” and subpar. (C) after “association”, and substituted “; and” for period at end.

Subsec. (b)(11) to (13). Pub. L. 102-546, §206(b)(1)(D), added pars. (11) to (13).

Subsec. (i)(4). Pub. L. 102-546, §228, which directed that “(other than a registered futures association).” be struck out, was executed by striking “(other than a registered futures association)” after “Any person” to reflect the probable intent of Congress.

Pub. L. 102-546, §209(b)(8)(B), made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act.

⁷Two subsecs. (q) have been enacted.

Subsec. (l)(2)(B). Pub. L. 102-546, § 402(12)(B), made technical amendment to reference to this chapter appearing after “violated any provision of” to reflect change in reference to corresponding provision of original act and substituted “; and” for period at end.

Subsec. (o)(4). Pub. L. 102-546, § 209(b)(8)(C), made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act.

Subsec. (p)(4). Pub. L. 102-546, § 204(a), added par. (4).

Subsec. (q). Pub. L. 102-546, § 206(b)(2), added subsec. (q) relating to major disciplinary rules violations.

1986—Subsec. (b)(2). Pub. L. 99-641, § 110(6), substituted “within” for “with in” before “the meaning”.

Subsec. (h). Pub. L. 99-641, § 107, amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: “If any registered futures association takes any disciplinary action against any member thereof or any person associated with such a member or denies admission to any person seeking membership therein, or bars any person from being associated with a member, such action shall be subject to review by the Commission, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such action has been taken or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall operate as a stay of such action until an order is issued upon such review pursuant to subsection (i) of this section unless the Commission otherwise orders, after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of affidavits and oral arguments).”

Subsec. (i). Pub. L. 99-641, § 107, amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows:

“(1) In a proceeding to review disciplinary action taken by a registered futures association against a member thereof or a person associated with a member, if the Commission, after appropriate notice and opportunity for hearing, upon consideration of the record before the association and such other evidence as it may deem relevant—

“(A) finds that such member or person has engaged in such acts or practices, or has omitted such act, as the association has found him to have engaged in or omitted, and

“(B) determines that such acts or practices, or omission to act, are in violation of such rules of the association as have been designated in the determination of the association, the Commission shall by order dismiss the proceeding, unless it appears to the Commission that such action should be modified in accordance with paragraph (2) of this subsection. The Commission shall likewise determine whether the acts or practices prohibited, or the omission of any act required, by any such rule constitute conduct inconsistent with just and equitable principles of trade, and shall so declare. If it appears to the Commission that the evidence does not warrant the finding required in clause (A), or if the Commission determines that such acts or practices as are found to have been engaged in are not prohibited by the designated rule or rules of the association, or that such act as is found to have been omitted is not required by such designated rule or rules, the Commission shall by order set aside the action of the association.

“(2) If, after appropriate notice and opportunity for hearing, the Commission finds that any penalty imposed upon a member or person associated with a member is excessive or oppressive, having due regard to the public interest, the Commission shall by order cancel, reduce, or require the remission of such penalty.

“(3) In any proceeding to review the denial of membership in a registered futures association or the barring of any person from being associated with a member, if the Commission, after appropriate notice and hearing, and upon consideration of the record before the association and such other evidence as it may deem

relevant, determines that the specific grounds on which such denial or bar is based exist in fact and are valid under this section, the Commission shall by order dismiss the proceeding; otherwise, the Commission shall by order set aside the action of the association and require it to admit the applicant to membership therein, or to permit such person to be associated with a member.”

Subsec. (j). Pub. L. 99-641, § 108, struck out sentence which read as follows: “The Commission shall approve such rules within thirty days of their receipt if Commission approval is requested under this subsection or within thirty days after the Commission determines to review for approval any other rules unless the Commission notifies the registered futures association of its inability to complete such approval or review within such period of time.”

Subsec. (k)(1). Pub. L. 99-641, § 110(7), substituted “section” for “title”.

1983—Subsec. (b)(4)(E). Pub. L. 97-444, § 233(1), inserted “, which may require the applicant to be fingerprinted and to submit, or cause to be submitted, such fingerprints to the Attorney General for identification and appropriate processing. Notwithstanding any other provision of law, such an association may receive from the Attorney General all the results of such identification and processing” after “adopt procedures for verification of qualifications of the applicant”.

Subsec. (b)(10). Pub. L. 97-444, § 217(b), required association rules to provide for “expeditious” procedure, redesignated cl. (iv) as (ii) and substituted “customer” as used in this paragraph shall not include another member of the association” for “customer” as used in this subsection shall not include a futures commission merchant or a floor broker”, and struck out clauses “(ii) the procedure shall not be applicable to any claim in excess of \$15,000, (iii) the procedure shall not result in any compulsory payment except as agreed upon between the parties.”.

Subsec. (d). Pub. L. 97-444, § 233(2), substituted “section 12a(1) of this title” for “section 12a(4) of this title”.

Subsec. (h). Pub. L. 97-444, § 233(3), substituted “subsection (i) of this section” for “subsection (k) of this section”.

Subsec. (j). Pub. L. 97-444, § 233(4), substituted “A registered futures association shall submit to the Commission any change in or addition to its rules and may make such rules effective ten days after receipt of such submission by the Commission unless, within the ten-day period, the registered futures association requests review and approval thereof by the Commission or the Commission notifies such registered futures association in writing of its determination to review such rules for approval. The Commission shall approve such rules within thirty days of their receipt if Commission approval is requested under this subsection or within thirty days after the Commission determines to review for approval any other rules unless the Commission notifies the registered futures association of its inability to complete such approval or review within such period of time. The Commission shall approve such rules if such rules are determined by the Commission to be consistent with the requirements of this section and not otherwise in violation of this chapter or the regulations issued pursuant to this chapter, and the Commission shall disapprove, after appropriate notice and opportunity for hearing, any such rule which the Commission determines at any time to be inconsistent with the requirements of this section or in violation of this chapter or the regulations issued pursuant to this chapter. If the Commission does not approve or institute disapproval proceedings with respect to any rule within one hundred and eighty days after receipt or within such longer period of time as the registered futures association may agree to, or if the Commission does not conclude a disapproval proceeding with respect to any rule within one year after receipt or within such longer period as the registered futures association may agree to, such rule may be made effective by the registered

futures association until such time as the Commission disapproves such rule in accordance with this subsection” for “Any change in or addition to the rules of a registered futures association shall be submitted to the Commission for approval and shall take effect upon the thirtieth day after such approval by the Commission, or upon such earlier date as the Commission may determine, unless the Commission shall enter an order disapproving such change or addition; and the Commission shall enter such an order unless such change or addition appears to the Commission to be consistent with the requirements of this section and the provisions of this chapter”.

Subsecs. (o) to (q). Pub. L. 97-444, § 233(5), added subsecs. (o), (p), and (q).

1978—Subsec. (b)(3)(B). Pub. L. 95-405, § 22(1), struck out “(7 U.S.C. 9)” after “sections 9 and 15 of this title”.

Subsec. (b)(10). Pub. L. 95-405, § 22(2), substituted “\$15,000” for “\$5,000”.

Subsec. (l)(1), (2)(A). Pub. L. 95-405, § 22(3), substituted “chapter” for “section” wherever appearing.

Subsecs. (m), (n). Pub. L. 95-405, § 22(4), added subsec. (m) and redesignated former subsec. (m) as (n).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

IMPLEMENTATION

Section 204(b) of Pub. L. 102-546 provided that: “The guidelines required under section 17(p)(4) of the Commodity Exchange Act [7 U.S.C. 21(p)(4)] (as added by subsection (a) of this section) shall be submitted by a futures association registered with the Commodity Futures Trading Commission on the date of enactment of this Act [Oct. 28, 1992] to the Commission for the approval of the Commission not later than one hundred and eighty days after the date of enactment of this Act.”

STUDY ON COMPUTERIZED FUTURES TRADING

Pub. L. 102-546, title II, § 220(b), (c), Oct. 28, 1992, 106 Stat. 3614, provided that:

“(b) STUDY.—The Commodity Futures Trading Commission shall conduct a study to assess—

“(1) the progress made under initiatives to conduct trading in futures and options subject to the jurisdiction of the Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.] through systems of computers or by other electronic means; and

“(2) whether the experience with such systems of trading indicates that they may be useful or effective to enhance access to the futures and options markets by potential market participants, improve the ability of the Commission to audit the activities of the futures and options markets, reduce the opportunity for trading abuses, and otherwise be in the public interest or raise other related issues.

“(c) REPORT.—Not later than two years after the date of enactment of this Act [Oct. 28, 1992], the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing the results of the study conducted under subsection (a), together with any appropriate recommendations.”

§ 22. Research and information programs; reports to Congress

(a) The Commission shall establish and maintain, as part of its ongoing operations, research and information programs to (1) determine the feasibility of trading by computer, and the expanded use of modern information system technology, electronic data processing, and modern communication systems by commodity exchanges, boards of trade, and by the Commission itself for purposes of improving, strengthening, facilitating, or regulating futures trading operations; (2) assist in the development of educational and other informational materials regarding futures trading for dissemination and use among producers, market users, and the general public; and (3) carry out the general purposes of this chapter.

(b) The Commission shall include in its annual reports to Congress plans and findings with respect to implementing this section.

(Sept. 21, 1922, ch. 369, § 18, as added Pub. L. 93-463, title IV, § 416, Oct. 23, 1974, 88 Stat. 1415.)

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§ 23. Standardized contracts for certain commodities

(a) Margin accounts or contracts and leverage accounts or contracts prohibited except as authorized

Except as authorized under subsection (b) of this section, no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

(b) Permission to enter into contracts for delivery of silver or gold bullion, bulk silver or gold coins, or platinum; rules and regulations

(1) Subject to paragraph (2), no person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of silver bullion, gold bullion, bulk silver coins, bulk gold coins, or platinum under a standardized contract described in subsection (a) of this section, contrary to the terms of any rule, regulation, or order that the Commission shall prescribe, which may include terms designed to ensure the financial solvency of the transaction or prevent manipulation or fraud. Such rule, regulation, or order may be made only after notice and opportunity for hearing. The Commission may set different terms and conditions for transactions involving different commodities.

(2) No person may engage in any activity described in paragraph (1) who is not permitted to engage in such activity, by the rules, regula-

tions, and orders of the Commission in effect on November 10, 1986, until the Commission permits such person to engage in such activity in accordance with regulations issued in accordance with subsection (c)(2) of this section.

(c) Survey of persons interested in engaging in transactions of silver and gold, etc.; assistance of futures association; regulations

(1)(A) Not later than 2 years after November 10, 1986, the Commission shall—

(i) with the assistance of a futures association registered under this chapter, conduct a survey concerning the persons interested in engaging in the business of offering to enter into, entering into, or confirming the execution of, the transactions described in subsection (b)(1) of this section; and

(ii) transmit a report of the results of the survey to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(B) Notwithstanding any other provision of law, for purposes of completing such report the Commission may direct, by rule, regulation, or order, a futures association registered under this chapter to render such assistance as the Commission shall specify.

(C) Such report shall include the findings and any recommendations of the Commission concerning—

(i) whether such transactions serve an economic purpose;

(ii) the most efficient manner, consistent with the public interest, to permit additional persons to engage in the business of offering to enter into, entering into, and confirming the execution of such transactions; and

(iii) the appropriate regulatory scheme to govern such transactions to ensure the financial solvency of such transactions and to prevent manipulation or fraud.

(2) The report shall also include Commission regulations governing such transactions. The regulations shall provide for permitting additional persons to engage in such transactions. The regulations shall become effective on the expiration of 90 calendar days on which either House of Congress is in session after the date of the transmittal of the report to Congress. The regulations—

(A) may authorize or require, notwithstanding any other provision of law, a futures association registered under this chapter to perform such responsibilities in connection with such transactions as the Commission may specify; and

(B) may require that permission for additional persons to engage in such business be given on a gradual basis, so as not to place an undue burden on the resources of the Commission.

(d) Savings provision

This section shall not affect any rights or obligations arising out of any transaction subject to this section, as in effect before November 10, 1986, that was entered into, or the execution of which was confirmed, before November 10, 1986.

(Sept. 21, 1922, ch. 369, §19, as added Pub. L. 95-405, §23, Sept. 30, 1978, 92 Stat. 876; amended

Pub. L. 97-444, title II, §234, Jan. 11, 1983, 96 Stat. 2322; Pub. L. 99-641, title I, §109, Nov. 10, 1986, 100 Stat. 3560.)

PRIOR PROVISIONS

Provisions similar to those appearing in subsec. (b) were formerly contained in section 15a of this title.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99-641 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “No person shall offer to enter into, enter into, or confirm the execution of, any transaction for the delivery of any commodity specifically set forth in section 2 of this title prior to October 23, 1974, under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.”

Subsec. (b). Pub. L. 99-641 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “No person shall offer to enter into, enter into, or confirm the execution of any transaction for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, under a standardized contract described in subsection (a) of this section, contrary to any rule, regulation, or order of the Commission designed to ensure the financial solvency of the transaction or prevent manipulation or fraud: *Provided*, That such rule, regulation, or order may be made only after notice and opportunity for hearing.”

Subsec. (c). Pub. L. 99-641 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The Commission shall regulate any transactions under a standardized contract described in subsection (a) of this section involving commodities described in subsection (b) of this section or any other commodities (except those commodities described in subsection (a) of this section) under such terms and conditions as the Commission shall prescribe by rule, regulation, or order made only after notice and opportunity for a hearing. The Commission may set different terms and conditions for such transactions involving different commodities. Notwithstanding any other provision of this section, the Commission may prohibit any transaction for the delivery of any commodity under a standardized contract described in subsection (a) of this section that is not permitted by the rules, regulations and orders of the Commission in effect on December 9, 1982, if the Commission determines that any such transactions would be contrary to the public interest.”

Subsec. (d). Pub. L. 99-641, in amending section generally, added subsec. (d).

1983—Subsec. (c). Pub. L. 97-444, §234(1), substituted “shall regulate” for “may prohibit or regulate” and authorized Commission prohibition of transactions for delivery of commodities under a standardized contract that was not permitted by the rules, regulations and orders of the Commission in effect on Dec. 9, 1982, where transactions are determined to be contrary to the public interest.

Subsec. (d). Pub. L. 97-444, §234(2), struck out subsec. (d) which provided for regulation of transactions in accordance with applicable provisions of this chapter where Commission determined the transactions under subsecs. (b) and (c) of this section were contracts for future delivery within the meaning of this chapter.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

§ 24. Regulations respecting commodity broker debtors; definitions

(a) Notwithstanding title 11, the Commission may provide, with respect to a commodity broker that is a debtor under chapter 7 of title 11, by rule or regulation—

(1) that certain cash, securities, other property, or commodity contracts are to be included in or excluded from customer property or member property;

(2) that certain cash, securities, other property, or commodity contracts are to be specifically identifiable to a particular customer in a specific capacity;

(3) the method by which the business of such commodity broker is to be conducted or liquidated after the date of the filing of the petition under such chapter, including the payment and allocation of margin with respect to commodity contracts not specifically identifiable to a particular customer pending their orderly liquidation;

(4) any persons to which customer property and commodity contracts may be transferred under section 766 of title 11; and

(5) how the net equity of a customer is to be determined.

(b) As used in this section, the terms “commodity broker”, “commodity contract”, “customer”, “customer property”, “member property”, “net equity”, and “security” have the meanings assigned such terms for the purposes of subchapter IV of chapter 7 of title 11.

(Sept. 21, 1922, ch. 369, § 20, formerly § 19, as added Pub. L. 95-598, title III, § 302, Nov. 6, 1978, 92 Stat. 2673; renumbered and amended Pub. L. 97-222, § 20, July 27, 1982, 96 Stat. 241.)

AMENDMENTS

1982—Subsec. (a)(3). Pub. L. 97-222, § 20(b), inserted “, including the payment and allocation of margin with respect to commodity contracts not specifically identifiable to a particular customer pending their orderly liquidation”.

EFFECTIVE DATE

Section effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 25. Private rights of action

(a) Actual damages; actionable transactions; exclusive remedy

(1) Any person (other than a registered entity or registered futures association) who violates this chapter or who willfully aids, abets, counsels, induces, or procures the commission of a violation of this chapter shall be liable for actual damages resulting from one or more of the transactions referred to in subparagraphs (A) through (D) of this paragraph and caused by such violation to any other person—

(A) who received trading advice from such person for a fee;

(B) who made through such person any contract of sale of any commodity for future delivery (or option on such contract or any commodity); or who deposited with or paid to such person money, securities, or property (or incurred debt in lieu thereof) in connection with any order to make such contract;

(C) who purchased from or sold to such person or placed through such person an order for the purchase or sale of—

(i) an option subject to section 6c of this title (other than an option purchased or sold on a registered entity or other board of trade);

(ii) a contract subject to section 23 of this title; or

(iii) an interest or participation in a commodity pool; or

(D) who purchased or sold a contract referred to in subparagraph (B) hereof if the violation constitutes a manipulation of the price of any such contract or the price of the commodity underlying such contract.

(2) Except as provided in subsection (b) of this section, the rights of action authorized by this subsection and by sections 7(d)(13), 7a-1(b)(1)(E), and 21(b)(10) of this title shall be the exclusive remedies under this chapter available to any person who sustains loss as a result of any alleged violation of this chapter. Nothing in this subsection shall limit or abridge the rights of the parties to agree in advance of a dispute upon any forum for resolving claims under this section, including arbitration.

(3) In any action arising from a violation in the execution of an order on the floor of a registered entity, the person referred to in paragraph (1) shall be liable for—

(A) actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

(B) where the violation is willful and intentional, punitive or exemplary damages equal to no more than two times the amount of such actual damages. If an award of punitive or exemplary damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants, and no hybrid instrument sold to any investor, shall be void, voidable, or unenforceable, and no such party shall be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, transaction, or instrument under this sec-

tion or any other provision of Federal or State law, based solely on the failure of the agreement, contract, transaction, or instrument to comply with the terms or conditions of an exemption or exclusion from any provision of this chapter or regulations of the Commission.

(b) Liabilities of organizations and individuals; bad faith requirement; exclusive remedy

(1)(A) A registered entity that fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce by sections 7 through 7a-2 of this title, (B) a licensed board of trade that fails to enforce any bylaw, rule, regulation, or resolution that it is required to enforce by the Commission, or (C) any registered entity that in enforcing any such bylaw, rule, regulation, or resolution violates this chapter or any Commission rule, regulation, or order, shall be liable for actual damages sustained by a person who engaged in any transaction on or subject to the rules of such registered entity to the extent of such person's actual losses that resulted from such transaction and were caused by such failure to enforce or enforcement of such bylaws, rules, regulations, or resolutions.

(2) A registered futures association that fails to enforce any bylaw or rule that is required under section 21 of this title or in enforcing any such bylaw or rule violates this chapter or any Commission rule, regulation, or order shall be liable for actual damages sustained by a person that engaged in any transaction specified in subsection (a) of this section to the extent of such person's actual losses that resulted from such transaction and were caused by such failure to enforce or enforcement of such bylaw or rule.

(3) Any individual who, in the capacity as an officer, director, governor, committee member, or employee of registered¹ entity or a registered futures association willfully aids, abets, counsels, induces, or procures any failure by any such entity to enforce (or any violation of the chapter in enforcing) any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, shall be liable for actual damages sustained by a person who engaged in any transaction specified in subsection (a) of this section on, or subject to the rules of, such registered entity or, in the case of an officer, director, governor, committee member, or employee of a registered futures association, any transaction specified in subsection (a) of this section, in either case to the extent of such person's actual losses that resulted from such transaction and were caused by such failure or violation.

(4) A person seeking to enforce liability under this section must establish that the registered entity² registered futures association, officer, director, governor, committee member, or employee acted in bad faith in failing to take action or in taking such action as was taken, and that such failure or action caused the loss.

(5) The rights of action authorized by this subsection shall be the exclusive remedy under this chapter available to any person who sustains a loss as a result of (A) the alleged failure by a

registered entity or registered futures association or by any officer, director, governor, committee member, or employee to enforce any bylaw, rule, regulation, or resolution referred to in paragraph (1) or (2) of this subsection, or (B) the taking of action in enforcing any bylaw, rule, regulation, or resolution referred to in this subsection that is alleged to have violated this chapter, or any Commission rule, regulation, or order.

(c) Jurisdiction; statute of limitations; venue; process

The United States district courts shall have exclusive jurisdiction of actions brought under this section. Any such action shall be brought not later than two years after the date the cause of action arises. Any action brought under subsection (a) of this section may be brought in any judicial district wherein the defendant is found, resides, or transacts business, or in the judicial district wherein any act or transaction constituting the violation occurs. Process in such action may be served in any judicial district of which the defendant is an inhabitant or wherever the defendant may be found.

(d) Dates of application to actions

The provisions of this section shall become effective with respect to causes of action accruing on or after the date of enactment of the Futures Trading Act of 1982 [January 11, 1983]: *Provided*, That the enactment of the Futures Trading Act of 1982 shall not affect any right of any parties which may exist with respect to causes of action accruing prior to such date.

(Sept. 21, 1922, ch. 369, §22, as added Pub. L. 97-444, title II, §235, Jan. 11, 1983, 96 Stat. 2322; amended Pub. L. 102-546, title II, §§211, 222(d), title IV, §402(14), Oct. 28, 1992, 106 Stat. 3607, 3616, 3625; Pub. L. 106-554, §1(a)(5) [title I, §§120, 123(a)(25)], Dec. 21, 2000, 114 Stat. 2763, 2763A-404, 2763A-410.)

REFERENCES IN TEXT

The Futures Trading Act of 1982, referred to in subsec. (d), is Pub. L. 97-444, Jan. 11, 1983, 96 Stat. 2294, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title of 1983 Amendment note set out under section 1 of this title and Tables.

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(25)(A)(i)(I)], substituted “registered entity” for “contract market, clearing organization of a contract market, licensed board of trade,” in introductory provisions.

Subsec. (a)(1)(C)(i). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(25)(A)(i)(II)], substituted “registered entity” for “contract market”.

Subsec. (a)(2). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(25)(A)(ii)], substituted “sections 7(d)(13), 7a-1(b)(1)(E),” for “sections 7a(11),”.

Subsec. (a)(3). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(25)(A)(iii)], substituted “registered entity” for “contract market” in introductory provisions.

Subsec. (a)(4). Pub. L. 106-554, §1(a)(5) [title I, §120], added par. (4).

Subsec. (b)(1). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(25)(B)(i)], substituted “registered entity that fails” for “contract market or clearing organization of a contract market that fails”, “sections 7 through 7a-2 of this title” for “section 7a(8) and section 7a(9) of this

¹ So in original. Probably should be preceded by “a”.

² So in original. Probably should be followed by a comma.

title”, “registered entity that in” for “contract market, clearing organization of a contract market, or licensed board of trade that in”, and “registered entity to the” for “contract market or licensed board of trade to the”.

Subsec. (b)(3). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(25)(B)(ii)], substituted “employee of registered entity” for “employee of a contract market, clearing organization, licensed board of trade,” and “such registered entity” for “such contract market, licensed board of trade”.

Subsec. (b)(4). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(25)(B)(iii)], substituted “registered entity” for “contract market, licensed board of trade, clearing organization,”.

Subsec. (b)(5). Pub. L. 106-554, §1(a)(5) [title I, §123(a)(25)(B)(iv)], substituted “registered entity” for “contract market, licensed board of trade, clearing organization,”.

1992—Subsec. (a)(1). Pub. L. 102-546, §402(14)(A), substituted “subparagraphs” for “clauses” in introductory provisions and “subparagraph” for “clause” in subpar. (D).

Subsec. (a)(2). Pub. L. 102-546, §402(14)(B), made technical amendment to reference to section 21(b)(10) of this title to correct reference to corresponding section of original act.

Subsec. (a)(3). Pub. L. 102-546, §222(d), added par. (3).

Subsec. (c). Pub. L. 102-546, §211, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “The United States district courts shall have exclusive jurisdiction of actions brought under this section. Any such action must be brought within two years after the date the cause of action accrued.”

EFFECTIVE DATE

Section effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as an Effective Date of 1983 Amendment note under section 2 of this title.

§ 26. Repealed. Pub. L. 102-546, title IV, § 402(15), Oct. 28, 1992, 106 Stat. 3625

Section, act Sept. 21, 1922, ch. 369, §23, as added Jan. 11, 1983, Pub. L. 97-444, title II, §236, 96 Stat. 2324, provided for special studies to be conducted by Commission, Board of Governors of Federal Reserve System, and Securities and Exchange Commission.

EFFECTIVE DATE

Section effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as an Effective Date of 1983 Amendment note under section 2 of this title.

§ 27. Definitions

(a) Bank

In sections 27 to 27f of this title, the term “bank” means—

- (1) any depository institution (as defined in section 1813(c) of title 12);
- (2) any foreign bank or branch or agency of a foreign bank (each as defined in section 3101 of title 12);
- (3) any Federal or State credit union (as defined in section 1752 of title 12);
- (4) any corporation organized under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.];
- (5) any corporation operating under section 25 of the Federal Reserve Act [12 U.S.C. 601 et seq.];
- (6) any trust company; or
- (7) any subsidiary of any entity described in paragraph¹ (1) through (6) of this subsection, if

the subsidiary is regulated as if the subsidiary were part of the entity and is not a broker or dealer (as such terms are defined in section 78c of title 15) or a futures commission merchant (as defined in section 1a(20) of this title).

(b) Identified banking product

In sections 27 to 27f of this title, the term “identified banking product” shall have the same meaning as in paragraphs (1) through (5) of section 206(a) of the Gramm-Leach-Bliley Act, except that in applying such section for purposes of sections 27 to 27f of this title—

(1) the term “bank” shall have the meaning given in subsection (a) of this section; and

(2) the term “qualified investor” means eligible contract participant (as defined in section 1a(12) of this title, as in effect on December 21, 2000).

(c) Hybrid instrument

In sections 27 to 27f of this title, the term “hybrid instrument” means an identified banking product not excluded by section 27a of this title, offered by a bank, having one or more payments indexed to the value, level, or rate of, or providing for the delivery of, one or more commodities (as defined in section 1a(4) of this title).

(d) Covered swap agreement

In sections 27 to 27f of this title, the term “covered swap agreement” means a swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act), including a credit or equity swap, based on a commodity other than an agricultural commodity enumerated in section 1a(4) of this title if—

(1) the swap agreement—

(A) is entered into only between persons that are eligible contract participants (as defined in section 1a(12) of this title, as in effect on December 21, 2000) at the time the persons enter into the swap agreement; and

(B) is not entered into or executed on a trading facility (as defined in section 1a(33) of this title); or

(2) the swap agreement—

(A) is entered into or executed on an electronic trading facility (as defined in section 1a(10) of this title);

(B) is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii) of this title;

(C) is entered into only between persons that are eligible contract participants as described in subparagraph (A), (B)(ii), or (C) of section 1a(12) of this title, as in effect on December 21, 2000, at the time the persons enter into the swap agreement; and

(D) is an agreement, contract or transaction in an excluded commodity (as defined in section 1a(13) of this title).

(Pub. L. 106-554, §1(a)(5) [title IV, §402], Dec. 21, 2000, 114 Stat. 2763, 2763A-457.)

REFERENCES IN TEXT

Section 25A of the Federal Reserve Act, referred to in subsec. (a)(4), is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25 of the Federal Reserve Act, referred to in subsec. (a)(5), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12.

¹ So in original. Probably should be “paragraphs”.

Section 206 of the Gramm-Leach-Bliley Act, referred to in subsecs. (b) and (d), is section 206 of Pub. L. 106-102 which is set out as a note under section 78c of Title 15, Commerce and Trade.

CODIFICATION

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

SHORT TITLE

For short title of sections 27 to 27f of this title as the “Legal Certainty for Bank Products Act of 2000”, see section 1(a)(5) [title IV, § 401] of Pub. L. 106-554, set out as a Short Title of 2000 Amendment note under section 1 of this title.

§ 27a. Exclusion of identified banking products commonly offered on or before December 5, 2000

No provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, an identified banking product if—

(1) an appropriate banking agency certifies that the product has been commonly offered, entered into, or provided in the United States by any bank on or before December 5, 2000, under applicable banking law; and

(2) the product was not prohibited by the Commodity Exchange Act [7 U.S.C. 1 et seq.] and not regulated by the Commodity Futures Trading Commission as a contract of sale of a commodity for future delivery (or an option on such a contract) or an option on a commodity, on or before December 5, 2000.

(Pub. L. 106-554, § 1(a)(5) [title IV, § 403], Dec. 21, 2000, 114 Stat. 2763, 2763A-458.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in text, is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

CODIFICATION

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

§ 27b. Exclusion of certain identified banking products offered by banks after December 5, 2000

No provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, an identified banking product which had not been commonly offered, entered into, or provided in the United States by any bank on or before December 5, 2000, under applicable banking law if—

(1) the product has no payment indexed to the value, level, or rate of, and does not provide for the delivery of, any commodity (as defined in section 1a(4) of the Commodity Exchange Act [7 U.S.C. 1a(4)]); or

(2) the product or commodity is otherwise excluded from the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(Pub. L. 106-554, § 1(a)(5) [title IV, § 404], Dec. 21, 2000, 114 Stat. 2763, 2763A-459.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in text, is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

CODIFICATION

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

§ 27c. Exclusion of certain other identified banking products

(a) In general

No provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, a banking product if the product is a hybrid instrument that is predominantly a banking product under the predominance test set forth in subsection (b) of this section.

(b) Predominance test

A hybrid instrument shall be considered to be predominantly a banking product for purposes of this section if—

(1) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument substantially contemporaneously with delivery of the hybrid instrument;

(2) the purchaser or holder of the hybrid instrument is not required to make under the terms of the instrument, or any arrangement referred to in the instrument, any payment to the issuer in addition to the purchase price referred to in paragraph (1), whether as margin, settlement payment, or otherwise during the life of the hybrid instrument or at maturity;

(3) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(4) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(c) Mark-to-market margining requirement

For purposes of subsection (b)(3) of this title, mark-to-market margining requirements shall not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

(Pub. L. 106-554, § 1(a)(5) [title IV, § 405], Dec. 21, 2000, 114 Stat. 2763, 2763A-459.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsecs. (a) and (b)(4), is act Sept. 21, 1922, ch. 369, 42 Stat. 998,

as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

CODIFICATION

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

§ 27d. Administration of the predominance test

(a) In general

No provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] shall apply to, and the Commodity Futures Trading Commission shall not regulate, a hybrid instrument, unless the Commission determines, by or under a rule issued in accordance with this section, that—

- (1) the action is necessary and appropriate in the public interest;
- (2) the action is consistent with the Commodity Exchange Act [7 U.S.C. 1 et seq.] and the purposes of the Commodity Exchange Act; and
- (3) the hybrid instrument is not predominantly a banking product under the predominance test set forth in section 27c(b) of this title.

(b) Consultation

Before commencing a rulemaking or making a determination pursuant to a rule issued under sections 27 to 27f of this title, the Commodity Futures Trading Commission shall consult with and seek the concurrence of the Board of Governors of the Federal Reserve System concerning—

- (1) the nature of the hybrid instrument; and
- (2) the history, purpose, extent, and appropriateness of the regulation of the hybrid instrument under the Commodity Exchange Act [7 U.S.C. 1 et seq.] and under appropriate banking laws.

(c) Objection to Commission regulation

(1) Filing of petition for review

The Board of Governors of the Federal Reserve System may obtain review of any rule or determination referred to in subsection (a) of this section in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the rule or determination, a written petition requesting that the rule or determination be set aside. Any proceeding to challenge any such rule or determination shall be expedited by the court.

(2) Transmittal of petition and record

A copy of a petition described in paragraph (1) shall be transmitted as soon as possible by the Clerk of the court to an officer or employee of the Commodity Futures Trading Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the rule or determination under review and any documents referred to therein, and any other relevant materials prescribed by the court.

(3) Exclusive jurisdiction

On the date of the filing of a petition under paragraph (1), the court shall have jurisdiction

which shall become exclusive on the filing of the materials set forth in paragraph (2), to affirm and enforce or to set aside the rule or determination at issue.

(4) Standard of review

The court shall determine to affirm and enforce or set aside a rule or determination of the Commodity Futures Trading Commission under this section, based on the determination of the court as to whether—

- (A) the subject product is predominantly a banking product; and
- (B) making the provision or provisions of the Commodity Exchange Act [7 U.S.C. 1 et seq.] at issue applicable to the subject instrument is appropriate in light of the history, purpose, and extent of regulation under such Act, sections 27 to 27f of this title, and under the appropriate banking laws, giving deference neither to the views of the Commodity Futures Trading Commission nor the Board of Governors of the Federal Reserve System.

(5) Judicial stay

The filing of a petition by the Board pursuant to paragraph (1) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of the determination).

(6) Other authority to challenge

Any aggrieved party may seek judicial review pursuant to section 6(c) of the Commodity Exchange Act [7 U.S.C. 9, 15] of a determination or rulemaking by the Commodity Futures Trading Commission under this section.

(Pub. L. 106-554, §1(a)(5) [title IV, §406], Dec. 21, 2000, 114 Stat. 2763, 2763A-459.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsecs. (a), (b)(2), and (c)(4)(B), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

CODIFICATION

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

§ 27e. Exclusion of covered swap agreements

No provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] (other than section 5b of such Act [7 U.S.C. 7a-1] with respect to the clearing of covered swap agreements) shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, a covered swap agreement offered, entered into, or provided by a bank.

(Pub. L. 106-554, §1(a)(5) [title IV, §407], Dec. 21, 2000, 114 Stat. 2763, 2763A-461.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in text, is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For com-

plete classification of this Act to the Code, see section 1 of this title and Tables.

CODIFICATION

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

§ 27f. Contract enforcement

(a) Hybrid instruments

No hybrid instrument shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, a hybrid instrument under any provision of Federal or State law, based solely on the failure of the hybrid instrument to satisfy the predominance test set forth in section 27c(b) of this title or to comply with the terms or conditions of an exemption or exclusion from any provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any regulation of the Commodity Futures Trading Commission.

(b) Covered swap agreements

No covered swap agreement shall be void, voidable, or unenforceable, and no party to a covered swap agreement shall be entitled to rescind, or recover any payment made with respect to, a covered swap agreement under any provision of Federal or State law, based solely on the failure of the covered swap agreement to comply with the terms or conditions of an exemption or exclusion from any provision of the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any regulation of the Commodity Futures Trading Commission.

(c) Preemption

Sections 27 to 27f of this title shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than anti-fraud provisions of general applicability) in the case of—

- (1) a hybrid instrument that is predominantly a banking product; or
- (2) a covered swap agreement.

(Pub. L. 106-554, §1(a)(5) [title IV, §408], Dec. 21, 2000, 114 Stat. 2763, 2763A-461.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsecs. (a) and (b), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see section 1 of this title and Tables.

CODIFICATION

Section was enacted as part of the Legal Certainty for Bank Products Act of 2000, and also as part of the Commodity Futures Modernization Act of 2000, and not as part of the Commodity Exchange Act which comprises this chapter.

CHAPTER 2—COTTON STANDARDS

Sec.

51. Short title.

51a. Extension of classification facilities to cotton growers.

Sec.

51a-1. Contracts with cooperatives furnishing classers; amount and type of payment.

51b. Licensing samplers; revocation and suspension of license.

52. Use of nonofficial standards prohibited; sales by sample excepted.

53. Licensing classifiers; revocation and suspension of license.

54. Classification by Department of Agriculture; certification thereof; effect of certificate; regulations for classification.

55. Fees and charges for cotton classing and related services; criteria; disposition of monies and samples.

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58. General inspection and sampling of cotton.

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61. General regulations, investigations, tests, etc., by Secretary.

61a. Annual review meetings with cotton industry representatives; purposes, etc.

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63. Liability of principal for act of agent.

64. Appropriation for expenses; appointment by Secretary of officers and agents; compensation.

65. Separability.

§ 51. Short title

This chapter shall be known by the short title of “United States Cotton Standards Act.”

(Mar. 4, 1923, ch. 288, §1, 42 Stat. 1517.)

EFFECTIVE DATE

Section 14 of act Mar. 4, 1923, provided: “That this Act [enacting this chapter] shall become effective on and after Aug. 1, 1923.”

§ 51a. Extension of classification facilities to cotton growers

The Secretary of Agriculture is requested to extend to cotton growers facilities for the classification of cotton authorized in this chapter, with such supervision of licensed classifiers as he shall deem necessary under authority of the United States Cotton Futures Act.

(Mar. 4, 1933, ch. 284, §1, 47 Stat. 1621.)

REFERENCES IN TEXT

The United States Cotton Futures Act, referred to in text, is part A of act Aug. 11, 1916, ch. 313, 39 Stat. 476, as amended, which was repealed by section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1. For complete classification of this Act to the Code prior to its repeal, see Tables.

CODIFICATION

This section was not enacted as part of the United States Cotton Standards Act which comprises this chapter.

§ 51a-1. Contracts with cooperatives furnishing classers; amount and type of payment

On and after July 5, 1952 the Secretary may contract with cooperatives furnishing classers and other facilities for classing cotton and may pay for such services in amount, some part of